(31)

No. 01-1289

IN THE

Supreme Court of the United States

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner,

v.

CURTIS B. CAMPBELL and INEZ PREECE CAMPBELL,

Respondents.

ON WRIT OF CERTIORARI TO THE UTAH SUPREME COURT

JOINT APPENDIX

Volume III of VII (pp. 1082a-1556a)

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* * *

INA MAY DeLONG called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified [76] as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

Q Would you state your name, please.
A Yes, Ina May DeLong.
Q And where do you live, Ms. DeLong?
A I live in Sacramento, California.

* * *

Q Are you a former employee of State Farm?
A Yes, I am.
Q Let me cover with you the time you spent at State Farm. Approximately how many years total were you associated with State Farm Insurance?
A A little over twenty-three. I was employed by the regional office for more than twenty-two, and I worked for an agent for a little over a year.
Q So a little over twenty-three years?
[77] A Yes.
Q When did you start with State Farm?
A In 1966.
Q And could you briefly just outline for us, in the interest of time, your career at State Farm, the different positions you held, and the years you held those?
A Well, I started in 1966, April of '66, in the service department, where I was a policy checker, where the policy would come to us to be checked in, assembled, and mailed out.

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Then I progressed to a calculator. You have to remember, these were the old days when a calculator was a position, not just an instrument. I did that for about a year. We would figure premiums based on information we were provided by underwriters and assistant underwriters.

From there I went into, I was still in the service department, but worked as an assistant underwriter, where we put worksheets on applications so that a policy could be produced from it. And from there I went into the underwriting department, and I was an underwriter for about six or seven years.

Q What does an underwriter do?

A An underwriter is the one that takes the [78] application, after the agent fills it out and sends it in, and makes decisions about whether or not that's an acceptable risk. If it's acceptable, they approve it and send it on to the service unit to be processed. If it isn't acceptable, they send it back to the agent, to either get more information or they deny coverage for it.

And if it's a policy in force, then they can make decisions about whether or not to cancel it mid-term, or non-renew it.

Q After you were an underwriter, did you have other positions at State Farm?

A Well, I did, but I quit the company for a brief time and went to work for an agent.

Q A State Farm agent?

A That's correct, yes.

Q And approximately when was that?

A That was December 13th of 1978.

Q Was the agent someone who was on a salary with State Farm Auto?

A He was a salaried agent for State Farm. He was a trainee at that time. They have to train for two years before they get their contract, so it was during that training period.

Q That you worked with him?

[79] A Yes.

Q And did he sell policies for State Farm Auto and Fire?

A Yes, and life and health.

Q And were you directly involved in that?

A Yes, I was.

Q During that period of time where you worked with the State Farm agent, did you get involved in handling claims for fire and auto, life and health?

A Fire and auto, not life and health.

Q And you had some direct involvement in that?

A Yes. Very direct.

Q After that period with the agent, what was your next position with State Farm?

A I went back to the company, to the regional office, into the claims department in the fire and casualty company.

Q The regional office was where?

A At that time it was in Rohnert Park, that's north of San Francisco, up by Santa Rosa.

Q Now, as you worked there, were you working in claims?

A Yes, I was.

Q For how long did you work in claims at State Farm?

[80] A I was in the claims department until August 31st of 1990. I went back in 1981, and was there for about nine years.

Q There in the same physical facility with you, were there people with State Farm Auto that worked close by?

A As close as I am to you, yes, or closer.

Q Did you interact with them on a daily basis?

A Yes, I did.

Q Did you observe them handling claims?

A Yes, I did.

Q Did you discuss claims handling with them?

A Yes.

Q Did you go to lunch with them?

A Yes.

Q From time to time would you consult with the people there with State Farm Auto in the handling of claims?

A Well, consult, share stories, complain. There was a lot of communication between fire claims and auto claims.

Q Did you have common management over both fire and auto claims handling?

A After a certain level, yes.

Q What level was that?

[81] A The manager level is where there's some joint responsibility with the actual claims handling. There are some joint responsibilities at the divisional claims level for facilities and vehicles and those types of things. But joint management after you get past the divisional claims superintendent level.

Q Did you serve on some catastrophe teams?

A Yes, I did.

Q Approximately how many?

A I believe there were six.

Q Different parts of the country?

A Yes.

Q Were those teams made up of claims people from both State Farm Fire and State Farm Auto?

A That's correct, yes.

Q Did you supervise some of those teams?

A I supervised in the Loma Prieta earthquake in 1989, and I supervised both fire and auto personnel.

Q Was there a time when you made the decision to leave State Farm?

A Yes, I did.

Q And when was that?

A August 31st of 1990.

Q Why did you leave State Farm?

A In protest of the way that claims were [82] handled by State Farm.

Q And did you do something to try to deal with that?

A Yes, I did.

Q What did you do?

A Well, I took documents from the company and went to the newspaper and exposed what was going on within State Farm.

Q Did you also, at some point in time, form an organization?

A Yes, I have.

Q And what was that?

A It's called United Policy Holders, it's a non-profit 501-C-3 education organization.

Q When did you obtain the non-profit status for United Policy Holders?

A We didn't get the non-profit status until January of '92, but I started doing disaster work and helping victims and using the name United Policy Holders in July of 1991.

Q First of all, who else is involved in the management of United Policy Holders besides yourself?

A Well, we have a very small board of directors, we have three on our board of directors, and then we rely for the most part on volunteers, and we [83] draw volunteers from all walks of life, really, that have expertise in different areas.

Q Does United Policy Holders charge people for helping them with insurance claims?

A No.

Q What is it that United Policy Holders does?

A A lot of what we do is we go into areas after they've had a disaster, and we help organize and educate consumers so that they know what they're entitled to, so that they're in

a better position to understand their coverages, and to interact with the company to make sure that they collect those benefits.

Q Do you hold meetings where people who have had a disaster can come and be educated on how to be treated fairly on their claims?

A Depending on our resources at the time, and the size of the disaster, we try to hold a series of meetings so that we can deal with the different issues. Sometimes if we don't have a lot of resources available to us, we'll do just generic meetings on like the ten steps that you need to follow to be able to understand and deal with your insurance. But if we have the resources, and especially after a major disaster, we try to continue to do meetings until everyone has their claim resolved.

[84] Q Has this proved to you to be more financially beneficial than your career at State Farm, to do this?

A Oh, no. No.

Q Where did you get the money to start United Policy Holders?

A Well, I sold my condo, cleaned out my savings, sold my van, sold jewelry, and continue to this day to do that.

Q I'd like to discuss with you some awards that you've received. Have you received any awards from the California senate?

A Yes.

Q And what is that?

A Woman Of The Year for 1994.

Q Have you received any consumer advocate awards?

A Yes, I got Consumer Advocate Of The Year for California for 1995.

Q Did the San Francisco Examiner recognize you?

A About three months after we got our non-profit status, we were listed as the number one business in the bay area for our contribution to consumers.

Q Have you appeared on various national television programs to try to assist consumers with [85] insurance concerns?

A Yes, I have.

Q And what have you done in that regard?

A I was on 60 Minutes in 1993, I've been on Good Morning, America, Peter Jennings, Charles Currault. I think those are all of the TV programs, the major TV programs. I've been on a lot of local and state TV and radio talk shows, appeared in some way in most major newspaper publications.

Q Approximately how many states have you been in as part of your efforts to educate and assist consumers?

A Last count, thirty.

Q Have you had some involvement in legislation, or proposed legislation?

A Yes, we're very active in state, in California in particular, but we've been involved with also Florida and Texas, where we also have our non-profit status.

Q Have you served on committees for the department of insurance in California?

A I serve on two committees now, one is the California Earthquake Authority, and the second one is the agent's curriculum board. Those are commissioner appointments in California.

[86] Q Have you testified before the insurance committee of the California legislature?

A Frequently.

Q Are you consulted by the chairman of the senate insurance committee in California?

A Yes, Senator Rosenthal looks to our group for technical expertise, because we're really the only non-profit organization in California that really specializes in just insurance.

Q Have you testified before the department of insurance in Texas?

A Yes, I have.

Q And have you testified in some cases, bad faith cases against State Farm Insurance?

A Yes, I have.

Q Are you involved in any class actions currently against State Farm Insurance?

A Yes, I am.

Q How many?

A Currently, I believe -- Well, a couple of them I'm involved as a consultant, one I have been retained as an expert. I believe probably three right now, one of them just settled.

Q Okay. Do these class actions involve single plaintiffs, or do they involve large groups?

[87] A Well, the class actions that I'm referring to all involve large groups. The one that just settled involved like two and a half million people.

Q Was that in California?

A Yes, it was.

Q And I don't expect you to know a lot of the particulars of that, but was the subject of the class action use of salvage auto parts and non-OEM parts?

A Salvage and after-market parts. OEM being original equipment parts.

Q Okay. It sounds like you're actively involved in a number of things to try to assist and protect consumers. How effective have you observed state insurance commissions to be in dealing with the abuses in insurance claims handling?

A Really --

MR. CRANDALL: Objection, Your Honor, this is beyond the scope of the witness designation. I believe there's an order limiting the scope of her testimony. She's not designated as an expert.

MR. CHRISTENSEN: Your Honor, I think State Farm has a pending motion to require us to cover these areas now, as opposed to rebuttal.

THE COURT: I'll allow it. Overruled.

THE WITNESS: Well, they're not very [88] effective at all, for several reasons.

Q (BY MR. CHRISTENSEN) And what do you understand those reasons to be?

MR. CRANDALL: I'll object as no foundation, calling for an expert opinion.

THE COURT: Overruled.

THE WITNESS: Sometimes it's resources, not having the staff or the money to be able to take on giant insurance companies that basically have unlimited resources. Sometimes it's desire on the part of the insurance commissioner. Sometimes it's because that person that's acting as the commissioner came from the insurance industry, and is going to be going back to the insurance industry, so it isn't in their best interest to do anything very aggressive toward the insurance company.

Q (BY MR. CHRISTENSEN) Are insurance commissioners typically a political office, either elected or appointed by someone who has been elected?

A It varies. I haven't done a count on that, but it's probably about half and half that are appointed and elected. Some are elected.

Q Based on your knowledge of State Farm, is State Farm politically active?

A Very.

[89] MR. CRANDALL: Objection, no foundation, Your Honor.

THE COURT: Lay some foundation, counsel.

Q (BY MR. CHRISTENSEN) Ms. DeLong, you have been -- You were employed by State Farm for twenty-three years.

A Correct.

Q As we've outlined. You have been active in political issues relating to insurance, as we've outlined, with California senate, testifying before the insurance commission in Texas; is that correct?

A That is correct, and the commission in California.

Q While you were at State Farm, did you observe things which indicated that State Farm was politically active?

A Yes, and we were required to be politically active.

Q Would you explain that, please.

A Well, if there was an initiative on the ballot that State Farm was particularly interested in what the outcome was, we were -- It was referred to as volunteering, but if you were interested in getting a raise or promotion, you did volunteer to do phone solicitations, and drive cars with bumper stickers on [90] them.

Then they have a legislative day where you were encouraged to go to the capitol and interact with politicians and do some handshaking and representing State Farm.

Q As you get involved in your efforts to get insurance legislation to protect people who buy insurance, are you aware at times of insurance companies, including State Farm, that also gets involved in those issues?

A State Farm employees and representatives, through trade organizations, are very visible in the capitol at all times.

Q Does State Farm make political contributions?

A Yes.

Q Now, we've talked about some of the ineffectiveness of insurance commissions in dealing with insurance claims handling abuses. How important are cases like this one that we're here trying in dealing with insurance claims abuses?

A Well, it's extremely important.

Q Why's that?

A Well, because the department of insurance will only impose a penalty based on that particular bad behavior for that particular thing. And it really does [91] nothing to deter the way they behave in general.

MR. CRANDALL: Objection, Your Honor, legal opinion of a non-expert witness. A legal opinion, beyond that.

THE COURT: I'll sustain that objection.

MR. CHRISTENSEN: Your Honor, she is allowed to give opinions. That's why she has been through the terrible process of having to produce documents, right while this trial's been going on.

MR. CRANDALL: She was designated as a percipient witness, Your Honor, not as an expert.

THE COURT: Counsel, approach the bench.

(Side bar conference held out of the hearing of the jury.)

Q (BY MR. CHRISTENSEN) Now, let me lay a little more foundation, I'm going to move on. During your time with State Farm, were there frequent transfers of claims people between the auto and fire companies?

A Yes.

Q And you worked with a number of claims people who had transferred from the auto company?

A Yes, they did.

Q Over the past few years since you left State Farm, have you received hundreds of phone calls from people who are insured with State Farm Auto relating to [92] you different concerns that they're having?

A Yes. Hundreds.

Q Are you familiar with the philosophies and methods used by State Farm Auto in handling claims?

A Yes, I am.

Q In many instances are they the same as those of the fire department?

MR. CRANDALL: Objection, no foundation.

THE COURT: Lay the foundation.

Q (BY MR. CHRISTENSEN) While you were at the fire company, did you become familiar over those years with the philosophies and methods handled by the fire company?

A Yes.

Q Or used by the fire company in handling claims?

A Yes, I did.

Q Including numerous claim schools?

A Yes.

Q Did your training involve non-written, verbal instruction from various supervisors and management people over the years?

MR. CRANDALL: Objection, irrelevant as to the fire company, Your Honor.

THE COURT: Overruled.

[93] THE WITNESS: Frequently it was unwritten.

Q (BY MR. CHRISTENSEN) And based on all the things that we've talked about, do you know whether many of those same philosophies and methods are used in the fire company, or excuse me, in the auto company in the handling of claims?

A Yes, they are.

Q Now, in answering the questions I'm going to be asking you, I'm going to request that you limit your answers to philosophies or methods that are either used by the auto company, or the fire and auto company both. If it's strictly fire, then don't talk about that.

A Okay.

Q Let me lay a little background. When insurance is sold, are there certain promises or commitments made to the person buying the insurance?

A Yes. That -- Well, in general it's a promise that if anything happens, they're going to take care of you. But more specific to State Farm, that they're your good neighbor.

Q And you were involved during part of your time at State Farm in selling insurance?

A I was not a sales agent, but I was involved with the agent that was selling insurance.

Q That includes selling both auto and fire [94] policies.

A That is correct, yes.

Q Now, when should an insurance company begin the process of handling a claim fairly?

MR. CRANDALL: Objection, calls for opinion testimony, Your Honor.

THE COURT: Overruled.

THE WITNESS: Well, when they sell the policy.

Q (BY MR. CHRISTENSEN) Would you explain that, please.

A Well, that's the time when the agent and the company, the underwriter should be addressing what coverages you need, what kind of protection you need, make sure that you have all of the coverages that you need, and that you're not paying premiums for coverages that you don't need. And gets you to interact with the agent in determining what those coverages are and what your exposure might be.

Q Now, you've indicated one of the things that's promised when an insurance policy's sold is peace of mind?

A That is the product that's sold. That's the promise, that you'll have peace of mind, that if anything happens to you they're going to take care of [95] you.

Q Based on all of your background and knowledge, have you found that State Farm delivers on that promise?

MR. CRANDALL: Objection, calls for an opinion.

THE COURT: Overruled.

THE WITNESS: State Farm has in place a plan to not deliver on that promise.

Q (BY MR. CHRISTENSEN) Would you explain that, please.

A Well, they have programs in place --

MR. CRANDALL: Objection, no foundation.

THE COURT: Overruled.

THE WITNESS: -- that come down from the very top, the president of the company, instructing them to cut indemnity cost.

Q (BY MR. CHRISTENSEN) Is that another term for reducing average pay per claim?

A That's correct, the indemnity is the money that you get for your claim.

Q Okay.

A And that comes down from the president. So when the adjuster has to watch what their average paid claim is, and they're instructed in ways to decrease [96] that average paid claim, and their promotions and their pay increases are based on whether or not you keep your average claim to either what it was the year before, or maybe a percentage less than it was the year before, there's no way that, as an adjuster, I can even focus on what it is that you're really entitled to. What was promised to you when you paid that premium. But I have to focus on what the company is making me do.

THE COURT: Counsel, follow that up with some foundation.

MR. CHRISTENSEN: Okay.

Q (BY MR. CHRISTENSEN) Did you actually experience that during your years at State Farm?

A Yes, I did.

MR. CRANDALL: Objection, irrelevant, beyond the scope. No foundation as to experiences at the auto company.

THE COURT: Just lay the foundation.

Q (BY MR. CHRISTENSEN) All right. Based on your knowledge of the auto company, and I've been through a fairly long list of that, and your interaction with people there, are you aware that that same situation takes place in auto claims?

A Yes, it does.

MR. CRANDALL: Object to the form of the [97] question, no foundation, calls for hearsay of a non-expert witness.

THE COURT: Overruled.

Q (BY MR. CHRISTENSEN) Does State Farm -- In this case State Farm has claimed that they pay full, fair value of every claim. Is that true, based on your background and knowledge?

A Absolutely, positively not.

Q You heard the slogan, while at State Farm -- First of all, are you familiar with the slogan, "State Farm pays what it owes, not a penny more, not a penny less"?

A I've heard it.

Q Was that something that applied to both State Farm Auto and State Farm Fire claims?

A It was supposed to apply to the whole company, but they had another slogan at State Farm that was more applicable.

Q And what was that?

MR. CRANDALL: Objection, hearsay, Your Honor. No foundation.

THE COURT: Lay the foundation.

Q (BY MR. CHRISTENSEN) Was the other slogan something you learned as an employee of State Farm that applied to both State Farm Fire and Auto?

[98] A Yes.

Q And what was that?

A "State Farm, God, and country."

Q And what did that mean?

A Well, it meant that State Farm was number one, and everybody else came after that, including God and country.

Q Was that actually taught in claims meetings?

A Well, it was a slogan that was thrown around in general conversation, in meetings, whenever they were trying to convince you that State Farm's way was the only way.

Q Would State Farm periodically audit claim files to check for overpayments or underpayments on claims?

A Yes. Well, kind of, yes.

Q Would you explain that, please.

A Well, in all of the audits that I have been involved in, seeing times that I've been audited, I have never seen one that addressed underpayments. Only overpayments.

Q Have you ever been reprimanded for an overpayment?

A Yes, frequently.

Q Ever reprimanded for an underpayment?

[99] A No, I was promoted.

Q Did State Farm -- And again, did this -- I want you to only answer this if it applied to both fire and auto, or to just auto -- does State Farm have philosophies and methods to gain the trust of claimants?

A Yes.

Q Were those methods used to try to pay less per claim?

A Yes.

Q Did you use some of those methods yourself?

A Unfortunately, yes.

Q Do they work?

A Extremely well. Like you wouldn't believe.

Q Did you have a number of people through your years at State Farm that you did not pay fair value on their claims?

MR. CRANDALL: Objection, no foundation. Beyond the scope of the witness designation.

THE COURT: Overruled.

MR. CRANDALL: Your Honor, may we approach the bench?

THE COURT: You may.

(Side bar conference held out of the hearing of the jury.)

Q (BY MR. CHRISTENSEN) All right, I was asking [100] you if you had, in your experience at State Farm, using methods that were common to both fire and auto, had paid people less than fair value for their claims. And I think your answer was yes.

A Yes. I think my answer was, unfortunately, yes.

Q Did this happen only on an occasional basis, or was it fairly common?

A For me personally?

Q Yes.

A It was on an occasional basis, when I didn't have the authority to do it the way that I thought it should be done, and had to rely on somebody else to get draft authority.

Q Were you pressured by management to pay people less than fair value?

A Yes.

Q Were you rewarded and commended when you did?

A When I paid them less, yes.

Q Now, of the people that you paid less than fair value, did any of them complain to the California insurance commission?

A In my time at State Farm, I don't recall one person ever filing a complaint that included me, with the department of insurance.

[101] Q Were there times when you didn't pay just a little less than it was worth, but a lot less?

A I remember one time in particular when I probably paid at least $98,500 less than it was worth.

Q And what was that situation?

A Where a woman had gone into a business that State Farm had insured, and it was a store that sold aquarium supplies and tropical fish, it was real dark. The woman tripped on some torn carpeting that had been taped, and the tape had rolled up and come loose. And walking out of the bright sunlight into this dark room, of course, couldn't see this, and tripped on that tape and had a rather serious-looking back injury.

And the reason I say serious-looking, is that when I saw her four or five days later she still couldn't walk. But hadn't been to the doctor's because she didn't have the money to go. And hadn't been able to work, was afraid of losing her house to foreclosure, and she needed $1,500 to make her house payment.

State Farm, knowing that it was probably a limits claim of $100,000, from all appearances that early after the accident, wouldn't give her the $1,500 without getting her to sign a release. And I begged her not to do it, but she was faced with losing her house or signing the release, and she couldn't afford to lose her [102] house. I mean she couldn't walk, she couldn't move. She was really in a difficult position.

And not only would they not give her the money, but they laughed at her in the process.

Q All right. Let me move on. Does the claims handling training at State Farm emphasize paying claims, or denying claims?

A Denying claims. That's what most of the training is all about, is how to deny a claim, and the wording that you need to use to deny it and protect yourself, should you be wrong, or should you have not completed enough of an investigation, so that your denial is really proper.

Q All right, let me move to another subject. Are people, in handling claims at State Farm, taught to look for vulnerable claimants?

A Yes.

Q And what can you tell us about that?

MR. CRANDALL: Object to the form of the question, vague and ambiguous. No reference to auto company.

THE COURT: Reframe the question.

Q (BY MR. CHRISTENSEN) Based -- and again, I want you to confine your answer to methods, policies that are apply to both fire and auto claims handling, or [103] to auto only. With that background -- Let me move this way.

Maybe I can do this more quickly. Does the training include looking for opportunities to take advantage of a weakness in a claimant to pay less?

MR. CRANDALL: Objection, leading.

THE COURT: Sustained.

Q (BY MR. CHRISTENSEN) Please explain what training you got, as far as looking for weaknesses in claimants, if any?

A Well, the way that we are instructed by State Farm is that there are certain ways that you can go about paying less on a claim than they're really entitled to. And the types of people that might be more willing to accept that lower offer than others. So we would be --

We had training in how to identify people, not only whether or not they would accept it, but if they fought it, and that litigation ensued because of that. Whether or not we would be in a position to beat them.

Q Okay. Before we move to that, let me ask you this. What kinds of groups were suggested in training that may be vulnerable to accept less than value on a claim?

[104] A Minorities, people that have a speech, a language problem was always a good one to target, senior

citizens, females, people that maybe have some kind of chaos in their life to where they just can't deal with fighting over a claims issue. Maybe a severe injury, an automobile accident.

These people that have been particularly, had their life upset because of the incident that led to this claim anyway.

Q Okay. Let me ask you. You've mentioned women. What do you mean by women?

A Well, me. Females.

Q Have you been able to determine whether State Farm pays women less, in general, than men on claims?

A Yes.

Q And what is that?

A Well, in documents -- I'm not sure how to answer this because of the directive about the auto.

Q Okay. All right, that deals with earthquake claims?

A Yes.

Q All right, I won't get into that. Has it been your experience that people who trust the State Farm adjuster get less?

A Yes.

[105] Q Are you claiming that all claims adjusters at State Farm are dishonest?

A No, but I'm claiming that there's a bigger incentive to be dishonest than there is to be honest. It's a much harder job when you try to be honest and give people what they're entitled to.

Q Now, we've had some time earlier in this case, I think from Mr. Crowe, who indicated at the time he was with State Farm he didn't feel like he was being unfair. Do you have some insight into that?

A Yes.

MR. CRANDALL: Objection, no foundation. This is calling for psychological expert testimony and analysis of another person's thought process.

MR. CHRISTENSEN: All right, I'll ask it another way.

Q (BY MR. CHRISTENSEN) Is there some training and teaching of philosophies at State Farm Fire and Auto to encourage claims representatives to use these methods, and view them as proper?

A Yes.

Q Would you explain that, please.

A Well, I don't usually refer to it as training, it's more like programming. We were led to believe that we had to cut these payments to these [106] people that file claims to protect the innocent people. And innocent people at State Farm are people that don't have claims.

Now, the only reason that you buy insurance and pay premiums is because you might have a loss. But when you turn in that claim, you're immediately viewed as a crook, and all of these red flags come up that cause us to want to investigate you because we have to protect the innocent people.

And when you live with that day after day, and there's so much emphasis placed on the State Farm family, you really get to the point to where you're thinking that you have to do this. I have to cut this payment because I have to protect these innocent people to keep their premiums from going up.

Q Okay. Let me move to another area. Some of these methods you've described, are they typically applied in larger claims rather than small claims, like, say, a windshield replacement?

A Well, typically the smaller claims, and especially the claims that get handled out of the agent's office, those are handled much fairer than the ones that get referred to the company, or the ones for a greater dollar value.

Q Okay, let me move to another area. Did you [107] receive training at State Farm, or observe practices or policies

that would apply to the auto company, as well, indicating State Farm used its economic superiority to pay less for claims?

A Oh, yes. Always.

Q Explain that, please.

A Well, we knew that anyone that was filing a claim, usually there was a hardship created by that, regardless of whether it was auto or fire, which gave us the leverage, because we had no hardship. We could wait as long as we needed to wait, and be as unreasonable as we wanted to, because we had the checkbook. You had the problem, but we've got the money.

And if they really pushed it and they really started getting forceful and threatening and saying, "Well, if you don't do this I'm going to go to the attorney," we were encouraged to tell them, "Go ahead and do it. We've got more money than you do."

Q Did that work?

A Oh, sure. We had more money than they did.

Q Were you provided information which was applicable to both the fire and auto claims handling on statistics of how many people who are underpaid actually discover it and pursue it?

A Well, State Farm's numbers were that only 2 [108] out of 10 would actually come back and try to get more on their claim. That 8 out of 10 will accept what the company gives them.

Q Did they provide any numbers of those that come back on claims that feel like they were entitled to more, how many will actually, then, file a lawsuit?

A Well, a lot of that 20 percent will actually get the right amount paid to them once they come back with their experts and say, "Hey, I know I'm entitled to more." But of the ones that actually have a dispute, it was State Farm's number that

1 in 100 that had a serious disagreement with State Farm would actually proceed to get an attorney and file a lawsuit.

Q Did State Farm provide you numbers of how many that file lawsuits actually make it to a trial?

A Yes, that 1 in 100 that filed a lawsuit would then make it to a trial. So we knew that even if they were really upset, only one out of 10,000 would ever see a courtroom.

Q The context that that was taught you in was what?

A "So what if they're upset? We can beat them, eventually we'll beat them. We can wear them down, or we can use the system against them. We have more money. We have attorneys that we pay hourly rates to that will [109] defend our conduct."

Q Were you instructed that whatever your conduct was, the company would defend it?

A We knew they would defend it. I was never, ever reprimanded for anything other than overpaying a claim.

Q Now, we've mentioned earlier that selling peace of mind is one of the things insurance companies provide with the product of insurance. Is it common knowledge among claims people in the industry, that going through lawsuits is not conducive to peace of mind?

A Oh, it's -- They know that it's a horrible experience for the policy holder to have to go through that, and especially when they wouldn't even be there negotiating with them if they hadn't already been through some type of disaster, whether it's a natural disaster or a personal disaster. They knew that they wouldn't be dealing with them unless their lives one way or another was turned upside down.

Q Now, I'm going to move to another subject. Again, restricting your response to practices, methods that were common to the fire and auto claims handling, were you ever aware at State Farm of a practice of building files?

[110] A Yes.

Q What does that mean?

A It means that you put in a file what you want the department or a plaintiff's attorney or a judge to see. That that file, from the very minute that you start handling that claim, you have an eye on its potential for proceeding to litigation.

Q And the potential that a court may see it?

A That's correct.

Q Did that involve, at times, writing self-serving documents to put in files?

A Frequently.

Q Did the attorney hired to defend the insured get involved in that, in the building of files?

A To defend the insured, or the company?

Q The attorney who ultimately would defend the insured if it went to litigation, did that attorney get involved in the building of files?

A Well, I'm still not sure I understand your question. The attorney that would represent the policy holder, should it proceed to litigation, didn't get involved.

Q Okay, he was the company attorney?

A Yes.

Q Were you aware at both State Farm Fire and [111] Auto of a practice of rewriting claims logs before they were produced in court?

A Yes.

Q What can you explain about that?

A Before they were produced in court, but actually long before that, they were rewritten. That was one of the things that would have been reviewed in the periodical reviews done by your management people, to make sure that that file was pretty sanitized.

Q Were you actually required to do that?

A Yes. You don't have to rewrite them very many times before you figure out what the game is. It's not a pleasant experience to have to go back and rewrite all of your entries and reword them, and change colors of ink so it looks like you've done it over a period of time. So you figure out what you're supposed to do, and you do it the way the company demands it's done the first time.

Q There's been some evidence in this trial about contests, Mr. Davis related some of that kind of testimony. Did you become aware at State Farm of contests to see who could resolve the most claims by paying nothing?

A I was not aware at the time I was still with State Farm of a contest to pay nothing. There was [112] always a great amount of pressure to see if you couldn't close it without paying nothing. But I have become aware of those contests after leaving State Farm.

Q How do you pay nothing on a claim?

A You deny it.

* * *

[113] * * *

Q (BY MR. CHRISTENSEN) Ms. DeLong, yesterday we had extensive testimony from a witness by the name of Ray Summers. And this isn't a question, but I'm trying to put this in context so it will make sense to the court and the jury and to you.

Mr. Summers, in essence, testified that State Farm had pressured and required him to falsify documents, and then, when State Farm decided they didn't want him to be employed there any more, they used the fact that he'd done that as a way to justify terminating him.

Let me ask you this. Are you aware of State Farm pressuring people into doing improper things, and then using that later against them if they want to be rid of them?

A Yes.

Q And what do you know in that regard?

A It's a major problem in the automobile repair industry, where there's not sufficient money allowed to do a proper repair, and shops try to do the repair with using the amount of money that has been allowed for it, and State Farm goes along with that as long as it's beneficial to them.

[114] But then when the shop owner finally gets tired of it and decides to speak out against that practice, the company has basically made them dirty, and uses that against them, in some cases even getting charges brought against them.

THE COURT: Just a minute, counsel. Mr. Belnap?

Q (BY MR. CHRISTENSEN) Based on the most current information you have, are the unfair claims practices being used by State Farm Auto and/or Fire getting better, or worse, or staying about the same?

MR. CRANDALL: Objection, no foundation.

THE COURT: Sustained. Lay the foundation.

Q (BY MR. CHRISTENSEN) Do you have regular information, based upon your work with the senate committees, the United Policy Holders, and all of the things you do, and the many phone calls that you get, do you, are you in a position to form a judgment as to whether these practices are continuing, whether they seem to be improving or getting worse?

MR. CRANDALL: Same objection, no foundation.

THE COURT: Let's let her answer it, yes or no.

THE WITNESS: Yes.

Q (BY MR. CHRISTENSEN) And what have you [115] observed in that regard?

MR. CRANDALL: Objection, no foundation for an expert opinion.

THE COURT: Counsel, approach the bench, here.

(Side bar conference held out of the hearing of the jury.)

THE COURT: Objection sustained.

Q (BY MR. CHRISTENSEN) Ms. DeLong, I'm going to show you page 10 of Exhibit 121-P, and I'm going to refer to the last paragraph on that. I think I asked another witness about this. Let me read that to you. It says, "Most of us consider our income, our debts, our domestic problems, how we spend our money, whether we are keeping up another woman, and things of that nature, to be very personal. We don't like other people asking us questions about these things, and under normal circumstances, we don't go around asking other people those questions.

"However, when we are faced with what we think is a fraudulent claim, or where a punitive damage count is in a lawsuit, these matters become extremely important to the successful defense of that claim."

The next paragraph says, "If the insured is paying the expenses of keeping some woman in an [116] apartment, that may be extremely personal business, especially if he is married. But if he submits a claim to us, or charges that we are guilty of conduct for which we should be punished, it's also our business."

Ms. DeLong, is that an accurate reflection of State Farm's philosophy as results, relates to dealing with people who make charges against, and accusations against State Farm of wrongful conduct?

A Well, it's definitely the way they do business when there are charges brought against them. But that's the kind of conduct that they actually start much earlier than even charges being brought against them.

Q Have you personally been the subject of some of this kind of conduct by State Farm? And let me preface that, you've been an outspoken critic of State Farm the last few years.

A Yes.

Q Have you personally experienced harassment and abuses from State Farm directed at you?

A Yes.

* * *

[117] **CROSS EXAMINATION BY MR. CRANDALL:**

Q Good afternoon.

A Good afternoon.

Q Like you, I'm also a Californian.

A Are you also freezing?

Q It's been pretty nice, actually. Has your vendetta against State Farm existed ever since they told you you were being investigated for the conflict of interest?

A Well, I'm not really aware that I have a vendetta against State Farm. But my difficulty with State Farm started long before there was any word of an investigation.

Q Let me see if I can understand your testimony, here, and put it in context. As I understand what you told us, you never worked for State Farm Mutual Automobile Company, but that's an evil company.

A Well, "evil" is your word, but it's a good one. And you're right, I never worked for them.

Q And you understand you're not here as an expert witness. You're here as a fact witness?

A Well, that is correct, but I'm also a bit confused, since my documents were subpoenaed. But it's my understanding I'm a fact witness, yes.

[118] Q And so what you're here to do is make a lot of wild accusations without any documentary proof.

A Well, I don't think they're wild at all. I spent most of my adult life with that company.

Q Well, in fact, have you submitted one document here today to show to the jury evidence that people from the auto company tell people from the fire company how to run the business?

A No, I have not provided any documents. I did submit fifty-three boxes, though, under subpoena.

Q And even though you have fifty-three boxes of documents that you've gathered against State Farm and others, to make money as a courtroom expert, you didn't bring one of those documents here to court to show to the jury, did you?

A I didn't bring any to show this jury. I was told that I would be testifying about my experience, but I didn't collect the documents to make money.

Q In fact, you're just a disgruntled ex-employee with a grudge, aren't you? You really have it in for State Farm.

A Absolutely not.

Q When we look at your career with State Farm, it wasn't a very successful and productive career, was it?

[119] A I guess it would all depend on what your idea of success was, but I thought it was very successful. I was very happy with my career at State Farm.

Q You never, in your entire career, were promoted into management, were you?

A I never was, but that isn't my idea of success.

Q Well, you were speaking today about the company's management policies. But isn't it true that never once, in the years that you were affiliated with State Farm, did you ever attend a meeting with other management people, such as claims superintendents, or divisional claims superintendents, because you weren't one of those people?

A Other than as a disaster supervisor, that's correct.

Q And, in fact, I didn't hear the word "Campbell" mentioned in your testimony. And that's because your testimony today had nothing to do with the Campbell case, did it?

A It is because I wasn't asked a question that required Campbell to be in the answer.

Q Have you read the Campbell claim file?

A No, I have not.

Q So you understand the name of this case is [120] Campbell versus State Farm?

A Yes, I understand it.

Q It deals with a case back in '81 and '82 and '83, and then went on appeal, which was Slusher and Ospital versus Campbell.

A I'm aware of that, yes.

Q But you haven't seen State Farm's claim file that's been produced in that case.

A No, I haven't.

Q Do you have a document that speaks to this grand conspiracy you told the jury about, that comes down from the president's office, to cheat people?

A Oh, yes, I have documents.

Q You didn't bring any with you today, did you?

A No, I didn't. I haven't provided any documents in connection with this case.

Q You didn't see anywhere in any of the president's messages that go out, by the way, to all the regional vice presidents; isn't that correct?

A That's my understanding, that's who it's addressed to.

Q And you weren't on the mailing list?

A No, I wasn't.

Q But through discovery, in numerous cases that you've been involved in against State Farm, you have [121] seen some of the president's messages that go out once a year to all the regions.

A I think that's where these documents would have come from, yes.

Q And nowhere in that, any of the president's messages to the regional vice presidents that you ever saw, did it ever say, "Our goal this year is to cheat people"; isn't that true?

A Well, it depends on whether or not you understand what "cheat" is. They don't have to use the word when they say "cut indemnity cost," because an indemnity cost is something that you're paying after the fact. And the only way you can cut it and brag about your profits is if you identify what you should have paid.

Q In fact, in the president's messages, what Ed Rust, Junior, the president of State Farm, is talking about, is trying to decrease the ever-rising cost of claims; isn't that true?

A No, it isn't.

Q You've heard talk about, "We're going to cut expenses in the federal government for health care, or cut expenses for welfare." You've heard those things on TV?

A Right, yes.

[122] Q And, in fact, when you get down to the analysis of it, it's, "We're going to decrease the ever-increasing rate of inflation of those expenses."

A Okay.

Q Isn't it a fact that in every year while you were at State Farm, from 1981, all the way, from 1976 until 1981, 1990, the average paid cost of claims, in fact, increased every single year for State Farm Mutual Automobile Company?

A Well, no, I don't know that it's true that it increased every year, but our cost of living adjustment went up every

year. So obviously there was a cost there that would have a direct bearing on what the cost of claims should be. So they should have gone up every year.

Q Your cost of living adjustment affected your pay. That's what you're saying, isn't it?

A Yes.

Q Now, let me talk about another area. Claims payments. Indemnity claims payments. And indemnity payments are payments that are made to people who are making claims; isn't that true?

A That is correct, yes.

Q And isn't it true that every year while you were at State Farm, the average paid cost of claims for [123] State Farm Mutual Automobile Company increased?

A I don't believe that's necessarily true, no. Maybe nationwide, the national average might have, but in specific regions it didn't necessarily always go up every year, depending on how successful they were in talking people into taking appearance allowances or after-market parts.

Q May I see your document?

A I didn't bring documents. I haven't produced --

Q You don't have any document, do you, in all of the boxes of materials that you obtained through lawyers across the country, that says that in any one year that the average paid cost per claim for the automobile company went down while you were working for State Farm; isn't that true?

A I haven't been asked to produce any documents.

Q You don't have that document, because you've never seen it, have you?

A I haven't been through all of the boxes of documents that I have. But I can tell you that I do have documents that talk about specific areas where the cost has gone down. Nationally, I don't know.

Q How about San Francisco? The area you're [124] from? That's one of the toughest legal climates and insurance climates in the nation, isn't it?

A I don't know that.

Q You don't know that?

A I don't know that.

Q You haven't analyzed the statistics for that?

A No, I haven't.

Q What you're really telling the jury is that State Farm has certain code words, and when they write a State Farm document that's passed out to everybody, and it says, "Be careful about expenses," the jury should interpret that as meaning, "Cheat people."

A Very possibly, yes.

Q And so you have determined that the documents at State Farm contain secret codes, and you've been able to unlock the code.

A Well, to say they contain secret codes is a little too Dick Tracy for me, but there are words that you would use that mean something to a claim superintendent that wouldn't necessarily mean the same thing to a plaintiff's attorney. But we didn't have like a decoder, you know, gun, or we didn't wear a hat or anything.

Q What about the documents that say "be sincere"? Is it your contention that that means be [125] sneaky?

A Well, if you're insincere when you're talking to a plaintiff or a claimant, chances are they're not going to buy into whatever you're trying to sell them. So sincerity isn't necessarily something that's advantageous to the policy holder.

Q And do you think that the testimony that you've given across the country against State Farm has been sincere? Or is it just the ramblings of a mad woman, who was mad about the way you left the company?

A I haven't seen myself as a mad woman that was rambling.

Q You are mad at State Farm, aren't you?

A "Mad" isn't a word I would use on it. I'm very unhappy at the way State Farm does business.

Q You have used that word, "mad," isn't that true, in sworn testimony? You have said you are mad at State Farm.

A Possibly. I wouldn't deny that I've ever used that word.

Q And, in fact, when you went to the department of insurance in Texas, and they cut you off from talking about State Farm, you came back with a gag.

A Yes, I did.

Q So you've been very dramatic in your efforts [126] to tell the world that State Farm is an evil empire; isn't that true?

A Well, I'm not near as dramatic as you are, sir, but I did come back with a gag, yes.

Q And, in fact, the department of insurance in Texas didn't levy any sanctions against State Farm, did it?

A I haven't talked to the department of insurance, I don't know.

Q Well, you've talked to the department of insurance in the state of California, and you filed formal complaints with them, haven't you?

A I filed a complaint, yes.

Q And, in fact, the department of insurance did not levy any sanctions against State Farm after investigating; isn't that true?

A I don't know that an investigation was ever done. Which might prove an earlier point.

Q As a result of your complaint there have been no formal action taken against State Farm, isn't that true?

A I have not asked them. I don't know that. All I can do is make the complaint. What the department chooses to do is up to the department.

Q Isn't it true that, in fact, you have been [127] precluded from testifying against State Farm in court by a judge who found that your testimony was prevarication?

A I have heard that from Ms. Levin.

Q Well, have you seen the transcript of the court testimony?

MR. CHRISTENSEN: I'm going to object to this, Your Honor. Obviously there were some factual findings or rulings that we're not privy to, and to try to interject another judge's rulings in another circumstance, in this case, I think is improper.

MR. CRANDALL: I have a reporter's transcript, Your Honor. I'll be glad to approach the bench.

MR. CHRISTENSEN: We're not here to relitigate that other case.

MR. CRANDALL: It goes to the credibility of the witness.

THE COURT: Let me see what you have.

(Side bar conference held out of the hearing of the jury.)

Q (MR. CRANDALL) Although you've talked about the documents that you have gathered, isn't it true that you haven't relied on any of those documents for the basis of your testimony in court, here?

A No, that isn't correct. I didn't go back and [128] specifically review any of those documents in connection with this case.

Q So your testimony here, then, is based upon your recollection?

A My recollection, and thirty years this April of dealing with State Farm and their documents.

Q So you haven't reviewed PP&Rs to come here and testify today.

A Not specifically in connection with this case, no, I haven't.

Q You said that you, as part of your work with United Policy Holders, speak to policy holders.

A Yes.

Q Have you talked to any policy holders in the state of Utah about third-party bodily injury claims, or was it just about the auto damage issues?

A I don't know.

Q So as you sit here today, you can't tell us that you have a specific recollection of talking to a third-party plaintiff who had a claim against the State Farm person and they told you bad things about that claim.

A Not in the state of Utah, I can't. I have no specific recollection. I get a lot of phone calls, and that isn't something that I would necessarily ask them.

[129] Q Does Utah have an unfair claims practices act?

A Yeah, I'm sure it does.

Q And do you know what it is?

A I have not reviewed that unfair claims practices act. I assume that it met the minimum requirements.

Q Isn't it true that your business, your means of making an income, is as a witness against insurance companies?

A That's a part of it.

Q And, in fact, the other part of it is United Policy Holders.

A No, I don't get a salary from United Policy Holders.

Q Well, what's the other part of your business, then?

A Speaking engagements.

Q And there you're speaking about insurance issues.

A Usually, yes.

Q And what percentage of your income comes from testifying in court?

A Probably about 75 percent, I would -- Well, in court, or court-related, not necessarily in court. [130] But about 75 percent of it would be my guess. I've never gone back and tried to figure it out.

Q And the people who hire you are lawyers who have cases against insurance companies.

A That is correct, yes.

Q So you know that the stronger the message that you can deliver, the louder the message, the more likely it is that you will get hired and be paid $200 an hour. Isn't that true?

A No.

Q You are paid $200 an hour, aren't you?

A For depositions and court testimony, I am, yes.

Q And so for the time you've spent in your depositions and in court testimony, you're getting $200 an hour?

A That is correct, yes.

Q And you have given many depositions over the six years since you left State Farm?

A I have given quite a few, yes.

Q In fact, you've testified in many trials against a number of insurance companies, haven't you?

A I've testified, I think, in about seven trials. In those six years.

Q Now, let me ask you about this United Policy [131] Holders. In fact, United Policy Holders was founded by you and a plaintiff's lawyer who sues insurance companies; isn't that true?

A And a law professor, yes.

Q And who's the law professor?

A Shelly Messenger.

Q And, in fact, at the time you founded United Policy Holders, the co-founder, Amy Bach -- Is that how you say the name?

A Yes.

Q Amy Bach was a lawyer in a case by the name of West versus State Farm, and she hired you as a consultant in that?

A No, that's not true.

Q You did work with Amy Bach in West versus State Farm?

A Amy Bach wasn't the attorney.

Q Who was the attorney?

A Greg Cane.

Q Worked with her?

A Greg Cane was the attorney on that.

Q Was he working with Amy Bach?

A I don't believe they were working together. I had no involvement with Amy Bach on that case. If she was involved in it, I don't know about it.

[132] Q What case did you work with Amy Bach on?

A I have never worked with Amy Bach on a case, other than when I was subpoenaed on Schopler versus State Farm.

Q You were subpoenaed?

A Yes, by State Farm.

Q And she was on that case.

A Yes, she was.

Q And you gave testimony.

A I did, yes. Because I was subpoenaed.

Q Isn't it true that United Policy Holders is, is simply an advertising wing for your expert witness business, and to get clients for lawyers who go from disaster to disaster, hoping to sue insurance companies?

A That is about as far from the truth as you could get.

Q Well, isn't it true that after catastrophes, you go around the country, and you rent rooms, and let it be known to the public that you're going to have meetings about their insurance rights.

A I don't rent rooms. I borrow churches, usually.

Q And isn't it true that at those meetings the people who come to explain people's insurance rights are plaintiff's lawyers who are there to sign up clients to [133] sue insurance companies.

A Absolutely not. Sometimes we bring in attorneys, engineers, contractors, we invite insurance management people, defense attorneys. But the whole reason behind doing these meetings is that so people can get what they're entitled to, and not have to resort to litigation. Attorneys accuse me of affecting their ability to get business. It's strange that now I'm being accused of pushing business to them.

Q Do you remember testifying in the Grundler case?

A I didn't testify -- I did give a deposition in Grundler. There again, I was subpoenaed by State Farm.

Q And didn't you testify in that case that when you have these meetings you invite lawyers who specialize in suing insurance companies?

A I don't recall that specific testimony, but yes, we do invite plaintiff's and defense attorneys. But see --

Q Isn't it true that at those meetings you don't disclose to the people who attend the meeting that these lawyers are going to hire you as a consultant at $200 an hour to testify against their insurance companies?

[134] A As a matter of fact, since I've started doing this, the attorneys that do meetings with us don't hire me on their cases, because they know that defense attorneys like you will make that allegation.

Q Do you remember giving deposition testimony in the West case?

A Yes.

Q And do you recall, in the West case, that you admitted that you don't tell the people who are in attendance that you're often hired by the lawyers who are also speaking?

A I don't hide it, but I don't make a special point of announcing it at every meeting, that I work as an expert witness and consultant.

Q So the people who come to hear about their insurance rights aren't told beforehand that they're going to hear from lawyers who want to sue insurance companies, and from a consultant that that lawyer will hire at $200 an hour to help say bad things against the insurance industry, are they?

A That is really a stretch.

Q You admit that's true in the West deposition, didn't you?

A Well, I don't know what you're referring to. The West deposition was a long time ago. But that's a [135] real stretch of what we do at these meetings.

Q Plaintiff's counsel, Mr. Christensen asked you about your board. Board of Directors.

A Yes, he did.

Q And who are the founding members of the board of directors of United Policy Holders?

A The founding members of the board?

Q Yeah, who are the founding board members?

A Well, Amy Bach and myself are the co-founders of United Policy Holders, and we started off with four board members when we first started United Policy Holders.

Q And those board members are, or were?

A Myself, Shelly Messenger, who's a retired law professor and a resident of Berkley, Amy Bach, who is a consumer advocate attorney that used to work for Governor

Cuomo on insurance issues and went back to get her law degree because of her involvement with insurance, and Bill Shirnof, who is also a consumer attorney in southern California, and an author, and a highly-respected attorney.

Q Consumer attorney.

A Yes.

* * *

[137] * * *

Q How many insurance company management people have you had on the board of United Policy Holders?

[138] A None.

Q And isn't it also true that some of the lawyers who hire you, in fact, contribute money to United Policy Holders?

A Unfortunately, very few of them.

Q Some do?

A We have had contributions from both plaintiff and defense attorneys.

Q Isn't it true that recently you began charging a fee for people to join United Policy Holders?

A We have a membership drive, but we don't have the membership connected to service. If you call and need help with your claim, we'll help you with your claim and never ask you to join or have that as a requirement before you get information.

MR. CRANDALL: Your Honor, I'll move to strike as non-responsive. My question was simply, isn't it true that you charge a fee?

MR. CHRISTENSEN: It was responsive. The question required an explanation. She gave it.

THE COURT: I'll allow it to stand.

Q (MR. CRANDALL) Do you charge a fee for membership?

A We have started charging a fee, and we have a formal membership now, because State Farm kept accusing [139]

us of not having members, that we weren't a legitimate membership organization.

So to try to get rid of those types of allegations from State Farm management people and their attorneys, we started working on this formal membership base, where we charge a small fee, but the fee is whatever the person wants to contribute. Sometimes it's as little as a dollar.

Q Isn't it also true that in 1992, you took a salary of $44,000 from United Policy Holders?

A , In '92, that's correct. Yes, I did. A small portion of what I took from State Farm in 1990.

Q And you're not here today on behalf of United Policy Holders, are you?

A No, I'm not here on behalf of them.

Q Isn't it true that United, Policy Holders has nothing, zero to do with the Campbell case?

A It had nothing to do with it that I'm aware of.

Q Let's talk about your background with State Farm. It's been suggested you were at State Farm about twenty-three years?

A That's correct.

MR. CRANDALL: May I move the easel, Your Honor?

[140] THE COURT: Certainly.

Q (MR. CRANDALL) Can you see this at that angle? Let me change the angle.

A No, I can't.

Q Now?

A Yes.

Q I heard some testimony about twenty-three years at State Farm earlier, and I'd like to go over it with you. You started April 7 of 1966 -- sorry, I said '87 earlier -- and you worked for twelve years as a policy checker, a premium calculator, and an underwriter. Is that true?

A Underwriting assistant and underwriter, yes. So that's twelve and a half years.

Q And they don't do claims, do they?

A Well, it depends on how you look at it. They're the ones that sell the coverage, so the coverage is in place when the loss occurs.

Q Did you adjust a single claim for any part of the company when you were there?

A I did not have a checkbook to adjust claims.

Q Then you quit the company, you resigned, didn't you?

A Yes, I did.

Q Because at State Farm, agents are independent [141] contractors, they're not employees of the company?

A Well, that's not totally true. He was a trainee agent.

Q You didn't get a State Farm pay check, did you? You got paid by the agent, didn't you?

A That is correct.

Q And you were not considered an employee of State Farm.

A I'm sorry.

Q Isn't that true?

A It's my understanding that that isn't totally true. While I didn't get a pay check from State Farm because he was a trainee agent, I did qualify for certain benefits with the company, because I was the employee of a trainee agent. So I still had certain benefits that I was entitled to from the company.

Q Did you get a State Farm pay check?

A I've answered that, no, I didn't.

Q And you, in fact, resigned to take that position, didn't you?

A Yes, I did.

Q And then you worked there a little over a year?

A About a year and three months, uh-huh.

Q Did the training agent succeed?

[142] A He did get his contract, yes. I left shortly after he got his contract.

Q And, in fact, you then went into the restaurant business?

A I bought a restaurant, yes.

Q Santa Rosa?

A Family, yes, on State Farm Drive.

Q And what was that restaurant?

A It was called Green Haven.

Q And that was, you were the owner until August of 1981?

A No, I was the owner until January of 1982.

Q But you went back to State Farm in August of 1981.

A That is correct. Yes.

Q And isn't it true that that's the first time you began work in the claims department?

A Actually, I was a claims adjust -- As a claims adjuster, yes.

Q And you worked for State Farm Fire and Casualty Company?

A That's correct.

Q And you didn't handle automobile accident cases for the auto company, did you?

A No, I did not.

[143] Q And you worked in Santa Rosa and San Jose for about four years, until November of '85, when you went out with a disability?

A That's correct, yes.

Q On that disability you were off actually twenty-two months, isn't it?

A Yes, it was.

Q And then you went back to State Farm in September of '87 at the fire company again, in the claims department, until August 31, 1990?

A Yes, that's correct.

Q So if we put those four years and three years together, you've had seven years in claims, and sixteen and a half years of non-claims work. Is that accurate?

A Well, probably. I'm taking your word for it.

Q Well, that's why I put it up here. If you want to change a date or disagree or check my adding, you're welcome to.

A I don't want to change anything. I'm just assuming your adding is correct. I mean there's nothing there that I'm in dispute with.

Q That's a big assumption in my case. But I have checked it. Let me ask you about your work with the agent, because you mentioned you handled claims. Isn't it true that State Farm Mutual Automobile Company [144] has a program where agents have draft authority to settle small, uncontested cases?

A That's correct, yes.

Q And so as an agent, or someone working at the agent office, what you were able to handle were broken windshields, damage to the insured's vehicle, some comprehensive losses like rock damage, and towing.

A That was the majority of what we handled. Emergency road service. They were minor claims, yes.

Q You didn't handle any third-party bodily injury claims, like if the insured hit somebody else and hurt that other person, you didn't handle those claims, did you?

A We didn't have draft authority to pay those claims, but we were the ones that took the loss report when that accident happened, relayed that information to the insurance company, to the claims department, and then we stayed involved in making sure that that claim got resolved.

Q And you didn't adjust the claim. That's --

A No, I didn't.

Q That's what the claims department's for?

A Yes.

Q And isn't it true that agents don't handle bodily injury claims.

[145] A That is true, they don't.

Q Now, you have a resume that you use in your business?

A Yes.

Q And your resume says that you enjoyed a successful progressive twenty-two-year career with a major insurance company?

A Yes.

Q Now, if we make a list of claims positions, we would start with a claim representative; is that right? Is that the first person?

A That's correct, yes.

Q And then what's after a claim rep?

A A senior claim rep.

Q And there's a senior claim rep. Okay. And then what?

A Claim specialist.

Q Okay. Then you get into management? Is that what you get, you become a supervisor?

A You're talking about, in general, the hierarchy at State Farm?

Q Yeah.

A No, they have a senior claims specialist position, but there aren't too many of those around. Usually they go into management, yes.

[146] Q It's hard writing this way. You'll have to excuse my writing. And then we have management?

A Well, those are end classifications, which is a management classification. But what is considered management at State Farm would be a supervisor.

Q Superintendent?

A Superintendent.

Q Okay, I've butchered that one. Then divisional claims superintendent?

A Correct, uh-huh.

Q I'll abbreviate it to avoid a spelling error.

A Okay. Manager. Well, it kind of goes in two different directions.

Q You can have a division claim manager?

A A manager would be the next position.

Q And then you can have the division manager that would be in charge of claims and underwriting and service.

A You could. Depending on the year and the region.

Q Okay, and then you get to the deputy regional vice president.

A Right.

Q And you know that name has been changed?

A That's my understanding, yes.

[147] Q It's called vice president of operations?

A Right.

Q Okay, but you knew it as a deputy -- I misspelled that too. Regional vice president. And then you get to regional vice president.

A Right.

Q So in your region where you worked, which was a northern California region?

A Right.

Q That was in Santa Rosa and then moved to Rohnert Park --

A Yes.

Q -- there were these various levels of authority.

A Yes. Well, once you get to divisional claims superintendent, then it branches out for actual claims and draft authority and goes to the home office. But basically that's correct, yes.

Q Because there are home office people over next to the divisional claims superintendent, like zone consultants?

A Correct.

Q So in your twenty-three years with State Farm, approximately, you rose to the level of a claim specialist? Is that what you were when you left?

[148] A That's correct, the highest level that I held was a disaster claim supervisor.

Q Now, because that was a disaster, you were given the title supervisor, but you weren't really a management person, were you?

A Well, you have management responsibilities, but it's like a field rank. Once the disaster's over then you go back to being whatever you were before.

Q So here's where you went through claim rep to senior claim rep through specialist.

A Correct.

Q Each supervisor supervised three or four claim people, didn't they?

A Depending, uh-huh.

Q And then a superintendent might have six claims adjusters, but they're called claim representatives at State Farm; is that correct?

A Well, pretty much. Kind of. It depends on how they divide those areas of responsibility. But basically that's correct.

Q And a divisional claims superintendent will have three or four or more superintendents, so each have five or six adjusters.

A Right.

Q So a divisional might manage fifty claims [149] people plus all the staff, secretaries, and people like that.

A That could be, or in some regions divisional claims superintendent basically has other responsibilities and no personnel.

Q And some divisionals are in charge of the building to make sure that there's a building there and there's typewriters and things.

A And cars, right.

Q So in your experience at State Farm, you never had formal hiring and firing authority, did you?

A No, I did not.

Q Now, your resume also says that you helped create a video to train people.

A Yes.

Q But isn't it true that that video you made was not authorized by State Farm, and, in fact, they withdrew it?

A Well, that's not totally correct, but that's the story that State Farm tells now, yes.

Q But, in fact, State Farm has a video-making department at home office in Bloomington, don't they?

A Yes, they do.

Q And isn't it true that while you were at State Farm, all the time you worked for the fire [150] company, that 75 to 85 percent of all the cases you handled were first-party fire claims, and that is somebody who owns a house, would say, "I have a water leak," or there's a fire claim, "My house caught on fire," something like that?

A I have no way of going back and determining what that percentage would be, but it was a high percentage, yes.

Q Do you recall in your deposition in this case estimating that it was that high?

A I was asked to guess, yes, and my guesstimate was that it was probably 75 or 80 percent.

Q And a first-party claim is where the insurer is asking the company to pay for damage, and a third-party claim is where somebody's suing the insured, or making a claim against the insured?

A That's correct, yes.

Q So only about 15 percent of the cases you had were third-party cases like the Campbell case.

A I think the 15 to 25 is what my estimate was, yes.

Q And, in fact, none of the cases you ever had were an automobile third-party case like Campbell; isn't that true?

A That is correct, with the exception of some [151] limited involvement when there was a PLUP involved, Personal Liability Umbrella Policy.

Q And when there was a PLUP involved, the automobile company adjusters adjusted those cases, didn't they?

A That's changed over the years. For the most part, the underlying was handled by the auto company, and the excess was handled by the fire company. They changed that a couple of times.

Q Isn't it true that, as we mentioned the hierarchy of the company, that there's this same level of claim reps for the fire company and in the auto company.

A Yes.

Q So --

A Well, plus there's a training position even prior to claim rep, but I didn't hold that position.

Q Okay. But if we want to put the automobile company and list their positions, they'd have the same positions all the way up to division manager, wouldn't they?

A Yes -- Well, you know, with a slight exception that they have estimators, the fire company also has structural damage appraisers, which are comparable. But pretty much.

[152] Q So if we made this the fire and this the auto company, up until the deputy regional VP, we'd have fire claim reps and auto claim reps. And fire senior claims specialists and fire superintendents, and auto superintendents and auto superintendents, and fire divisional claim superintendents and auto divisional claims superintendents; isn't that true?

A Yes.

Q In fact, they don't work on each other's files, do they? They have their own files?

A Well, it depends on an actual file, no, they wouldn't.

Q And, in fact, the auto company and the fire company go to different claim schools, don't they?

A Well, it depends on what schools you're talking about, yes.

Q Well, if you go to a fire company school, you go to the fire company building back in Bloomington, Illinois, which is across town from the auto company building, isn't it?

A Well, that also changes frequently. It depends on what year you're talking about.

Q What fire company claim school did you go to?

A The fire company claim school.

Q At the fire company building.

[153] A Well, at the time that I went to claim school it was the old building downtown, it was "the building."

Q And that's the fire company building, isn't it, today?

A I don't know what it is today. At the time it was the home office.

Q Isn't it true you never have been to State Farm Mutual Automobile Company's automobile claim school?

A Right, I haven't.

Q And isn't it true that you never had handed to you to adjust a State Farm Mutual Automobile Company automobile accident claim for a third-party bodily injury case.

A That's correct, right.

Q So you never handled a case like the Campbell case, did you?

A I never was the adjuster assigned to a case like that, no.

Q Now, when you went to the fire company claim school, they gave you some material about the guidelines for how you're supposed to handle claims, didn't they?

A No.

Q You've heard that State Farm operations guides --

[154] A I've heard of operation guides, yes.

Q State Farm Fire and Casualty's guidelines for handling claims?

A That's basically what it is.

Q And the State Farm Fire and Casualty Company's operation guidelines are different from the State Farm Mutual Automobile Company's claims manual; isn't that true?

A Those are two separate sets of manuals, but some of the information in the State Farm operation guides also pertains to auto claims.

Q Isn't it true that the State Farm Mutual Automobile Company's claim manual is different than the operation guide?

A Those -- That's two different things that we're talking about, right.

Q And you never received a copy of the State Farm Mutual Automobile Company claim manual, did you?

A I don't know if I have a copy of that. I didn't receive a copy while at State Farm.

Q There's been some discussion in this case about a claim committee meeting. You never sat in on a claim committee meeting, did you?

A I never sat on one. I prepared the documents for one.

[155] Q That's because a claim committee consists of a divisional claim superintendent and two or three superintendents.

A Very probably, yes.

Q Now, in your position as a claim specialist, you were never given authority by State Farm Fire and Casualty Company to deny coverage, were you?

A Oh, yes, I was.

Q To deny coverage. Not a claim. Doesn't denial of coverage have to come from the management level?

A I could deny coverage on a claim. And did, frequently. I didn't have to get approval for that.

Q Do you recall your testimony in the Sanders case?

A I don't know what you're referring to specifically. I remember Saunders. Is this Saunders?

Q Fine, excuse my mispronunciation. Isn't it true that in the Saunders case, at page 144 of your deposition -- and counsel, volume 2 at line 10 -- you were asked the question, "Were you ever given the authority while you were in the claims department of State Farm to deny any fire claim for coverage reasons?"

Answer. "No, I wasn't."

A Well, I'd have to go back and read what led [156] up to that, but we could definitely deny a claim where someone had filed a claim for benefits under their policy, we had authority to deny that claim. But you know, that was a two-day deposition, I think, and I don't know what you were referring to. It's difficult when you try to pick one line out of that.

Q Before you could send back a lawsuit, if someone turned it in, you had to go to meetings and have claim committee meetings?

A If there was a lawsuit involved, yes.

Q Doesn't, in fact, State Farm have a lot of procedures which protect insureds and third parties from arbitrary and capricious claims people?

A No.

Q Well, isn't it true that management people review claim files on a regular basis, they're diaried?

A Yes, but that's proving my point of my previous answer.

Q But isn't it true that if a claim representative says, "I'm denying this claim," in the ordinary course of things, somebody in management would review that file.

A That they only review it through the eyes of the adjuster. There isn't an independent review of the actual details of the loss, so what good does it do?

[157] Q The superintendent or the supervisor can, in fact, find that an adjuster made a mistake, or got in a personal dispute, or for some reason wrongfully is not analyzing the case properly and can correct it. I'm simply asking you, isn't there a procedure to safeguard against an individual being arbitrary?

A No. Nothing.

Q You disagree with that?

A Yes, I disagree with it, fully.

Q Weren't your claims routinely reviewed by supervision?

A Yes, they were reviewed, but they were reviewed only --

Q Thank you.

MR. CRANDALL: I think she's answered the question, Your Honor.

MR. CHRISTENSEN: Your Honor, I'd like to let her finish. He cut her off in mid-sentence.

MR. CRANDALL: I simply asked if they reviewed her cases on a regular basis.

THE COURT: You can return to it in redirect. Objection is overruled.

Q (MR. CRANDALL) You never worked at State Farm's office in Bloomington did you?

A No.

[158] Q And you never talked to Mr. Rust and said, "What do you really mean by this president's message?"

A No, at the time I talked to him I didn't ask him that.

Q And one of the president's messages that you've referred to in your documents is of July 30, 1991, and in that president's message Mr. Rust wrote to the regional vice presidents and told them that in addressing affordability, four broad areas require attention during this year's planning process and beyond. First he put, "excellence in products and service."

MR. CHRISTENSEN: I'm going to object to this, Your Honor. I don't know if it's in evidence. If it is, it hasn't been identified, and I don't think there is a question pending. This is just part of a speech that's being given.

MR. BELNAP: Your Honor, the president's forecasts have been offered, and subject --

THE COURT: I'll allow it. Overruled.

MR. CHRISTENSEN: If she's familiar with it, it's certainly fair to ask her about it. But to simply stand there and read from it seems to me it's more closing argument material.

Q (MR. CRANDALL) Ms. DeLong, you have [159] testified that you reviewed president's messages, and President Rust told all the regions to cut the average paid cost per claim. Do you recall that testimony earlier today?

A I recall similar to that, yes.

Q Now, I have before me, from among your documents, the 1991 president's message from Mr. Rust, it's entitled, "Planning Message" to all the regional vice presidents. And isn't it true --

MR. CHRISTENSEN: What are you referring to, counsel? What year are you referring to?

MR. CRANDALL: July 30, 1991. Can I approach, Your Honor?

THE COURT: Sure.

Q. (MR. CRANDALL) Isn't it true that -- Do you want to get glasses? Go ahead.

A Not if you hold it for me.

Q I'll hold it out for you.

A Okay.

Q That Mr. Rust says in here, "As we face 1992, there is growing economic and political pressure on the price of our services and products. Affordability is an issue the entire organization must take seriously." Do you see that?

A I see it.

[160] Q And you were aware at State Farm, that State Farm was concerned that it was one of the more expensive insurance products on the market?

A It's gotten to be that, yes. I don't think it was in '91, but it's getting fairly expensive.

Q And you are aware that there was growing pressure from companies who are direct writers, who don't have agents who are selling their insurance for less.

A Well, no, I don't necessarily know that, but --

Q Let's look at this message. Because he says, "In addressing affordability, four broad areas require attention during this year's planning process and beyond." The first thing he says is excellence in products and services. Do you see that?

A Right, he said that.

Q Is that a code word for cheating people?

A You'd have to ask him. It says what it says.

Q And then the second one is quality in our book of business. You see that?

A Right.

Q The third one is effective claims cost management. Do you see that?

A Yes.

[161] Q And that speaks to affordability, that they manage the cost of claims.

A That's not really what it speaks to.

Q Well, "effective claims cost management," did Mr. Rust tell you what he meant by that?

A He doesn't have to. I know what a claim is, I know what the cost is.

Q What is cost management in claims? Doesn't cost management in claims mean the expenses of running the claims department, and the expenses of litigation?

A Not necessarily.

Q He also has aggressive expense control. Do you see that?

A Yes.

Q And expense control in '91 meant, "We're paying too much to lawyers in litigation," doesn't it?

A Probably. It should have. In '91 they had, what, 92,000 BI claims in suit.

Q And by the way, does it say anywhere in here that, "You are to cut the average paid cost you pay to settle a claim"?

A When they went "claim cost management," how much it costs to settle a claim is an amount that's pre-determined by the loss itself. And you cannot cut that cost, and you can't even measure that savings [162] without doing something that's wrong.

Q Even though you never made it into management, you're aware that the company speaks in terms of costs as being an expense, and indemnity as being a payment; isn't that true? Isn't that the language that's used in the industry?

A They're used frequently interchangeably, and usually they refer to allocated and non-allocated and indemnity costs. But you also don't have all of the report there.

Q You made a very strong statement on direct examination that while you were there, State Farm people were programmed to cut payments to claimants. Isn't it true that from April 6 of 1966 through August 30 of 1990, every single year you were at State Farm, the average paid cost for bodily injury claims for the auto company rose?

MR. CHRISTENSEN: Objection, repetitive. I think we've been through this.

MR. CRANDALL: I didn't think so.

THE COURT: I think this is repetitious. I'll sustain the objection.

Q (BY MR. CRANDALL) Do you have a document, some statistic to support what you're saying, that you brought to court with you today?

[163] A Well, I didn't bring any documents with me to court. I'm sure I could go back through the 53 boxes, though, and find documents that support that, yes.

Q You've been on your anti-State Farm crusade for six years, now. Isn't that enough time for you to actually find a document that you can wave in front of a jury?

MR. CHRISTENSEN: Objection, argumentative.

MR. CRANDALL: I'll withdraw it, Your Honor.

Q (MR. CRANDALL) Let me ask you about your crusade against State Farm. The reason you left State Farm was because State Farm was investigating you for a conflict of interest with a contractor; isn't that true?

A That's absolutely not true. Totally not true.

Q You resigned August 31st, 1990?

A Yes.

Q Isn't it true that you were told before you resigned that you were under investigation because of a potential conflict of interest with a general contractor who was working on the earthquake?

A I wasn't real clear what the allegations were, but when I resigned I did my exit interview with the deputy regional vice president, who assured me that that investigation had been concluded, and they found [164] nothing, which is exactly what I told them they would find. It was not only concluded, but it was closed, and wasn't even raised again until after I went to the newspaper and got a front page article.

MR. CRANDALL: Your Honor, I'd like to refer to the deposition, page 112.

MR. HUMPHERYS: The present deposition? Which one?

MR. CRANDALL: Volume 1.

THE COURT: You may publish it, counsel.

MR. CRANDALL: You know, I think I can just paraphrase it, it's simpler.

Q (MR. CRANDALL) You were told before you resigned that you were being investigated.

MR. CHRISTENSEN: Which page, counsel?

THE WITNESS: Yes.

MR. CRANDALL: Pardon?

MR. CHRISTENSEN: Which page?

MR. CRANDALL: 112.

Q (MR. CRANDALL) Isn't that true?

A Yes, uh-huh.

Q And the reason for the investigation was that it was alleged you were taking favors from a contractor who was doing business with the company.

A That was my understanding. I never saw the [165] letter or any -- He was never even interviewed in that investigation.

Q And State Farm, by the way, required that you sign every year a conflict of interest statement; isn't that true?

A There was a form that we signed, yes.

Q And I think we have it right here with us. You got mad when State Farm started an investigation, didn't you?

A I told State Farm they could investigate all they wanted. That wasn't what I was mad at State Farm about. I was mad at State Farm for leaving people in unsafe homes because they trusted State Farm.

Q Do you recall testimony in the Walter, David Walter case about being angry over the investigation?

A I don't recall that. I'm not denying it.

Q So you were angry over the investigation?

A I was angry over the situation surrounding the investigation.

Q Let's talk about the conflict of interest rules. I had it enlarged, but obviously not enough. This says -- And by the way, page 2, let me just show you, so we're looking at the same document. That's "Ina DeLong," that's your signature,

A May 11th, 1990, Ina DeLong.

[166] Q And this document says, "It's a policy of this company that no officers, directors, or employees should use their position or knowledge gained therein in such a manner that a conflict between the company's interests and their personal interests arise. Both the fact and the appearance of the conflicting interests are to be avoided."

You knew that to be the company policy?

A Yes, I signed that.

Q And it also said, "All officers, directors, employees, and the members of their immediate families should avoid the receipt of payments, gifts, entertainment, or other favors which go beyond common courtesies usually associated with accepted business practice and thereby might be regarded as placing them under some obligation to a third party dealing or desiring to deal with the company."

A Yes.

Q So you were aware of that.

A Yes, uh-huh.

Q Now --

A I signed that.

Q And you signed it.

A I did, yes.

Q And, in fact, after signing this, isn't it [167] true that you accepted a color television set from a Mr. Roy Taylor, a contractor, who was bidding for business to repair homes from the earthquake?

A I accepted a color TV from a contractor in Santa Cruz, yes.

Q And that was Mr. Roy Taylor?

A That's correct, yes.

Q And you would agree that even the appearance of a conflict of interest should be avoided under your conflict of interest laws.

A That's right. Even if there was no conflict, if you do nothing wrong but someone thinks that it looks like you might have, even if they investigate you and find that you did nothing, the fact that they thought it might look like it, it's still a conflict.

Q And it would be a conflict to promote that the company do business with somebody who's a friend, or who has given you a gift.

A That's true, yeah.

Q And isn't it true that when you made that video tape to train the claims people, you had Roy Taylor be in that video tape?

A He was one of several, yes.

A And isn't it true that you got upset when the company withdrew that video tape?

[168] A I got upset over the way that they withdrew it, and the fact that they had no training program for earthquake to replace it. That's why I made it in the first place.

Q Now, you would agree that it could be wrong to accept gratuities from a contractor who's doing business with your company.

A It could, depending on what the reasons were.

Q Now, isn't it also true that you had Mr. Taylor, who was with Mountain View Builders, added to State Farm's approved list of contractors?

A I don't think I was the one that had him added. He was on the list, but I think Mr. Villama was responsible for that.

Q But he got added to the list after you met him.

A That's correct, yes.

Q And isn't it also true that you threw a birthday party for Mr. Taylor?

A For him, among others, yes.

Q And you threw that birthday party for him at his apartment.

A He had a condominium, yes.

Q And that was a surprise birthday party.

A Yes, it was. He knew nothing about it.

[169] Q Now, your policy also says that if you find, "If they find they have a financial interest or outside relationship which might involve a conflict of interest, they should immediately make all the facts known to their supervisors and be guided by the instructions they receive."

Isn't it true that you didn't report the fact that Mr. Taylor had given you a television set, the fact that you had thrown him a surprise party, the fact that you had been shopping together, the fact that he had driven you to the scene to inspect a damaged house --

MR. CHRISTENSEN: I'm going to object to this as a speech. It's a compound question, and it's a rambling speech.

MR. CRANDALL: I'll rephrase it.

MR. CHRISTENSEN: Please do.

MR. CRANDALL: I'm sorry.

Q (MR. CRANDALL) I'm trying to watch the time, here. Isn't it true you didn't tell your supervisors he gave you a color television set?

A I didn't tell them.

Q And isn't it true that you didn't tell your supervisors that you drove together in his truck to the scene to inspect a damaged house from the earthquake?

A That is not an uncommon occurrence, due to [170] the severity of the damage after the earthquake, that's true. But they knew it.

Q Isn't it true you didn't report to your supervisors this outside relationship where you were giving him a party?

A I didn't, no.

Q And wasn't that a violation of the conflict of interest rules?

A Well, it would depend.

Q Isn't it true that you had a party at your hotel room at the Capitola Inn, and you invited Mr. Taylor, among others, to that?

A I usually had a dinner at my hotel room, but it wasn't a room, it was an apartment at the hotel. I lived there for six and a half months. And every week I tried to do something for anybody that was there from out of town that didn't have any place else to go.

Q And Mr. Taylor was there from out of town, from Santa Cruz?

A Mr. Taylor was there from Las Vegas. We were in Santa Cruz.

Q Isn't it true that when you got ill during this earthquake disaster program, that it was Mr. Taylor who took you to the hospital?

A That is true, yes.

[171] Q And isn't it also true that after you resigned from State Farm, on August 30, or 31st, 1990, within eight days you went to Denver and opened up a business with Mr. Taylor?

A That is correct, yes.

Q And your deal with Mr. Taylor -- I don't mean to demean it by saying "deal" -- your contract, or your agreement was that you'd share in the profits if you were to get him some business for his construction company.

A That was one of the probabilities, yes.

Q Now -- And by the way, you were unable to get him business, and that relationship ended.

A No, that's not true.

Q Well, you moved back to California, didn't you?

A Well, we did get business, but I spent most of my time helping policy holders get their claims resolved, which created a conflict, because I wasn't out trying to get business, I was trying to help policy holders. And my agreement was that I would be there until a newspaper agreed to work with me on a story. At the time that I got an agreement I came back to California.

Q And, in fact, you were soliciting newspapers [172] and television stations to do a story about you, so you could tell about your being mad at State Farm, and start your business as being an expert witness; isn't that true?

A Absolutely not. Not even close to the truth.

Q Isn't it true that you were working, as you've just told us, on getting a newspaper to run an article about you?

A About what happened after the earthquake. Not about me. I'm not newsworthy.

Q Wasn't your picture in the paper in the article?

A I was on the front page with my little grandson, yes.

Q In addition to this conflict of interest policy, doesn't State Farm have an operations guide that says specifically you're not supposed to ride to the scene with the contractor who's bidding on the project?

A That is correct. But you're supposed to use judgment in those situations. We weren't provided with four-wheel-drive vehicles, and we were working earthquake claims in an area that was mountainous, that was sometimes very difficult to get back into these places.

And the superintendent, Mr. Caesar Villama [173] knew that on occasions adjusters, and not just me, but adjusters, were riding with contractors because their vehicles were more adaptable to that condition. But I wasn't handling claims. I was supervising claims.

Q So Mr. Taylor was from Las Vegas, came to Santa Cruz for the earthquake, moved to Denver for the hail storm, didn't he?

A No. He wasn't in Denver when I was there.

Q You opened his business?

A I was there setting up the office, but he was in Santa Cruz.

Q And what was the name of that business?

A It was called R. W. Taylor Construction.

Q And that's Roy Taylor.

A Right.

Q And you're not a licensed contractor, are you?

A No, I'm not.

Q In fact, Roy Taylor wasn't a licensed contractor when he worked in Santa Cruz, was he?

A You'll have to talk to Roy Taylor about that.

Q Was one of your jobs as a supervisor in the catastrophe department to find out that people who were doing work on these houses are, in fact, licensed contractors?

[174] A There was a license number on his card. In all my years with State Farm I was never asked to check a license. But also we weren't getting these contractors to do repairs. We only interacted with a contractor to get help in determining what the value of the loss was. It's the policy holder that signs the agreement to actually have the work done.

Q So if we look at this chronology, and we add the next couple of steps on to here, then in August of -- You quit, and it's August of '90 that you go to Denver to open up the construction company.

A I think it was around the 7th, yeah.

Q And it wasn't until when that United Policy Holders got their charter?

A '92.

Q So you didn't quit State Farm to become a consumer crusader. You quit the company to open a construction company in Denver. And when that didn't work, then you came back.

A Absolutely not.

Q When did you come back to California?

A I came back at Thanksgiving. So about two months.

Q And during that two months, you weren't talking to the department of insurance in California, [175] were you?

A During the two months, I don't recall -- I know I was talking to the department by January. But I don't know if I had talked to them during that two months or not. But I was involved in getting other articles published in newspapers about the one-year time, the statute and the policy, and working on consumer issues during that time.

Q And as a result of your efforts to get all of this information in the newspaper, you've been hired on more than twenty lawsuits to serve as a consultant at $200 an hour; isn't that true?

A Well, I'm not paid $200 an hour for the whole thing. A lot of it I do for free, and I've never counted them. But the first attorney that called and asked me if I would be an expert witness was after the article came out in the paper, and when he asked me if I'd be an expert for him I said, "I don't know, what's an expert do?" So that's how well laid these plans were.

Q And, in fact, they were laid well enough that you got together with an attorney who sues insurance companies.

A As a result of that article, Amy Bach and I eventually met, and after what, a year and a half of [176] spending my own money and running around the state helping people, even paying for an 800 number so they could call me at my expense, not theirs, eventually we found that we needed to get a non-profit status if we were going to get any outside help.

Q And this non-profit company was able to generate a $44,000 income for you in 1992.

A One year, compared to my $65,000 salary in nine months with State Farm.

Q And then, in addition to that, you've received the money you get as an expert witness, or as a consultant.

A Which is minimal, yes.

Q And let me ask you some questions about the Campbell case, by the way. Do you know the facts of the Campbell case?

A I have --

MR. CHRISTENSEN: I'm going to object to this, Your Honor, it's repetitive. We need to finish this witness today. She needs to leave, and this has gone on a long time on very collateral issues, and this is repetitive.

THE COURT: Counsel?

MR. CRANDALL: We're here to talk about the Campbell case, Your Honor.

[177] THE COURT: I understand that. You've already asked some questions, and if you want to go further than you have I'll allow that. But if it's just a matter of asking her what she knows --

MR. CRANDALL: I will be focused, Your Honor, thank you.

Q (MR. CRANDALL) I know I asked you if you had read the claim file. But now I'm asking you if you've read any documents about the Campbell case, the underlying case.

A I don't recall reading any documents.

Q So you don't know what the police report said, or what the witnesses said?

A I have not read those files, no. I have some limited information about those subjects.

Q Is the limited information what the experts said in the underlying case?

A The limited information, as I understood it, was information that came from the claim file and from the reports.

Q Are you aware of the amount of the underlying judgment?

A I have heard that number. I don't know if I could tell you exactly what it was, but I think something like five times the coverage sticks in my [178] mind.

Q What was the coverage?

A $50,000, I believe.

Q And how much of that money has Mr. and Mrs. Campbell paid?

A I don't know. I haven't asked that. Nor do I --

Q Have you been advised of the fact that State Farm paid the entire judgment --

MR. CHRISTENSEN: I object to this, it's going way beyond the scope of direct.

MR. CRANDALL: This is cross examination.

THE COURT: I'll allow it, but I would suggest we move through this area quickly.

Q (MR. CRANDALL) Have you been told that Mr. and Mrs. Campbell haven't paid one dollar to satisfy the judgment or the costs or the interest on the underlying case? That State Farm paid it all?

A I would hope that State Farm has paid it all.

Q Were you advised that before you came here as an expert witness -- excuse me, as a percipient witness?

A I don't recall if I've been advised of that or not. Possibly. I don't recall. But I would hope that State Farm paid it. They owed it.

Q Have you talked to any of the claims [179] representatives?

A No, I haven't.

Q Do you know when State Farm paid it?

A No, I don't. Obviously sometime after the judgment if they paid it, though.

Q But you don't even know the date it was paid.

A I don't know the date. But after the judgment, if they did pay it.

Q Let me try to speed things up, you have to get out of town. You talked about some bad practices?

A Don't say it like that. I don't have to get out of town, I just have places to go.

Q I didn't mean to --

A I don't think I have to get out of town.

Q But I've dealt with some flight schedules myself, so I understand.

A Okay.

Q Isn't it true that while you were in underwriting and service for twelve years, you never heard anybody say, "We have a practice here to cheat people"?

A No, that isn't necessarily true.

Q So way back in the sixties and seventies, you knew that State Farm was cheating.

A It was less obvious then, but there were [180] things that we did that took advantage of the policy holders that didn't know what they were entitled to.

Q And you went right along with them?

A Well, I went along with it within the scope of what my job responsibilities were.

Q So as you sit here today, you're willing to say that for some twenty-three years it was okay with you to do bad, evil practices to cheat people?

A It absolutely was not. From day one, anything that I saw that was not fair, I complained about, and I complained about it loud and frequently.

Q In fact, State Farm has an open door policy, whereby if your supervisor tells you to do something that you don't like, you can go over his or her head, talk to the next person.

A You can, yes.

Q Okay. Now --

A But it doesn't necessarily mean it's going to accomplish anything, so the open door, it might be open, but it doesn't necessarily do you any good to go through it. As a matter of fact, sometimes they slam it on you.

Q But, in fact, you have probably found during your life where there have been occasions where people disagreed with you?

A There have been. There have been occasions [181] when I disagreed with them.

Q And you don't mean to say, just because someone disagreed with you, that they're unreasonable?

A If they disagreed with me when I had the hard evidence and they wanted me to just not talk about it, I would say they were extremely unreasonable. And that their conduct was despicable, at least.

Q And did you go to the next open door?
A I open-doored that person, yes.

* * *

[182] * * *

Q And State Farm has a rule where anybody in that whole company can go into any level of management and say, through the open door policy, "Somebody's doing something wrong." Isn't that true?

A That is true, and that's why I went all the way to the deputy regional vice president with my State [183] Farm documents, not just allegations, but proof, before I quit the company and went to the newspaper. I gave them every opportunity to correct it.

Q To the deputy regional vice president?
A Greg Jones, yes.
Q Who was that?
A Greg Jones.
Q Now, wait a second. Greg Jones wasn't a vice president.
A He was a deputy regional VP. He's now a regional VP in southern California.
Q I thought State Farm taught people to discriminate. Don't they?
A I don't know what you're getting at.
Q Can you describe Mr. Jones?
A Yes, I can.
Q How would you describe him?
A He's an African American, is that where you want me to end?
Q Sure.
A Okay.
Q Now, did he discriminate against you because you were a woman?

A I don't know what his reasons were for not following up on it. It was his, his adjusters that had [184] done the review that was the result of the forms that I took to him, and he was the one that decided to sweep it under the carpet and not correct it. And was promoted for doing it. Everyone that played a role in sweeping the $175 million savings on that earthquake under the carpet, leaving people's lives endangered, were promoted. So don't tell me crime doesn't pay.

Q Mr. Jones, is it?
A Mr. Jones.
Q Is now a regional vice president.
A That's correct, yes.
Q And by the way, while we're talking about discrimination, who's the assistant vice president of claims?
A In --
Q For the auto department.
A I don't know that I know who you're referring to.
Q Pardon me?
A I don't know who you're referring to.
Q Do you know who the assistant vice president of claims is?
A In this region?
Q No, the assistant vice president of claims. At home office there are levels too, aren't there?
[185] A Right, there are. I was just trying to clarify your question. No, I don't.
Q In fact, it's a woman, isn't it?
A Very probably.
Q Isn't it a black woman?
A It very probably could be. But I'll bet it's a --
Q How about an old black woman?
A It could be a forty-year-old black woman doing what a forty-year-old white male tells her to.

Q As a matter of fact, most of the forty-year-old white males in the company report to her, don't they?

A Possibly. But I bet she reports to somebody and does what she's told to do.

Q Isn't it true that since you left State Farm, being mad at this investigation, you've criticized them for whatever they do?

A I didn't leave because I was mad about the investigation. That investigation meant nothing to me. And the investigation was concluded at the time I left the company, and wasn't reopened until after I went to the newspaper, which was months later.

Q And, in fact, you've criticized State Farm for settling cases, the opposite of this case, where [186] we're criticized for not settling. Isn't that true?

A I have criticized them for that, depending on what the circumstances were.

Q And then you've criticized State Farm for trying cases and winning them. We only try the winners; is that what you testified to?

A You try the ones you think you can beat, yeah.

Q Would you expect State Farm to try the cases they expect to lose?

A I expect them to try the ones they think there is wrongdoing there, where there is a legitimate case to be made. Not just where they can beat somebody up.

Q If State Farm is winning 96 percent of their trials, doesn't that indicate to you they're trying the cases that they can win because they have facts on their side?

A Absolutely not. And the litigation doesn't even start when the facts have been developed. State Farm starts putting together their cases before they even know the facts of the loss. They have forms that you fill out about, "What kind of

witness would this person make on the stand if this should proceed to litigation?" And they don't know anything about your [187] claim.

Q Isn't that an important part in evaluating a case?

A Absolutely not.

Q Wouldn't you agree that a broken finger on a violinist is worth a lot different sum than a broken finger on a lawyer?

A Well, but shouldn't we find out what, maybe what finger's broken, and also the specifics of the case?

Q How many personal injury cases have you, yourself, taken to trial while at State Farm?

A None of mine. I always settled mine.

Q And, in fact, the evaluation of a personal injury case is a very inexact science, isn't it?

A Yes and no.

Q There's no book on the shelf that says a broken finger is worth so much, a broken arm is worth so much.

A There isn't, that's right.

Q Because it depends on every particular circumstance of every individual case.

A Well, that is correct. But a broken finger on a sixty-year-old housewife should be worth the same as a broken finger on a forty-year-old housewife.

[188] Q Well, that's something that has to be considered, what they are doing, and what the disability is from that, isn't that true? Because, in addition to looking at the bills, you've got to look at the residual disability, or how it affects a person's enjoyment.

A That's sort of it.

Q And that's different for every individual person?

A That's correct, yes.

Q So every individual case has a different number, potentially?

A That's correct. But it still doesn't mean that you should start by identifying whether or not you can beat that person in a court of law based on their education or their, whether or not they're bikers or hippies or --

Q May I see that document?

A I don't have that document. But you do have copies of all my documents. I'm sure it's in there.

Q Could you show it to us?

A No, I didn't bring them.

Q Now, you've had situations, in your claims experience, where people wanted more money than you thought the case was worth; isn't that true?

A That is true. And it also depended on what [189] stage of the investigation it was. Sometimes I thought they wanted more than they were entitled to, and when I finished my investigation I found out they actually were entitled to more.

Q In fact, in your deposition in this case you admitted that sometimes the demands people make for their claims are exorbitant.

A They can be.

Q So you don't advocate that an insurance company adjuster pay every claim, pay every demand, do you?

A No.

* * *

[196] * * *

Q (BY MR. CRANDALL) Have you provided in any of your recent depositions the names of people who have [197] cheated policy holders in accordance with management instructions? Isn't it true you haven't done that?

A Well, no, that isn't true in the way that you phrased that question, because anybody that goes out to handle a claim that's not properly trained is cheating policy holders when they don't tell the policy holder that they don't know what they're doing.

Q I didn't ask you about training. I asked you --

A We're talking about cheating.

Q Can you list people who cheated people in accordance with management instructions to do that?

A Yes.

Q You've never listed them in the depositions, have you?

A Well, I haven't been asked to give them a list, but when you give people less than they're entitled to, you're cheating them.

Q Give us a list.

A Well, I didn't come prepared to give you a full list, but most of the adjusters that worked on the earthquake were cheating policy holders, and that was the whole reason for going back and doing the closed file review, is we knew --

I could also give you the name and policy [198] number of the people that were cheated.

Q Did Mr. Humpherys or Mr. Christensen give you any information about the name of this case? Campbell versus State Farm Mutual Automobile Company?

MR. CHRISTENSEN: Objection, repetitious.

Q (MR. CRANDALL) Do you have the names of any people employed by State Farm Mutual Automobile Company who cheated people in third-party bodily injury cases when they were following management instructions?

A Well, now I'm really confused, because that wasn't your question.

THE COURT: He's asked you a whole different question, if I understand.

THE WITNESS: Okay.

Q (MR. CRANDALL) Do you recall your counsel, or Mr. Christensen asking questions about the auto company?

A Yes.

Q Do you have any information, any names of anybody in the auto company who cheated people in the third-party bodily injury cases like the Campbell case?

A Well, I haven't gone back and tried to put together a list like that. But I would be more than happy to do that for you.

Q And you're aware that there's no allegations [199] in this case that an earthquake caused this accident?

A I'm absolutely aware of that, and I didn't imply that.

Q Now, isn't it true that you were never told to remove a report that you prepared from a file?

A No, that's not true.

Q I'll refer you to your deposition, page 361.

MR. HUMPHERYS: Which deposition?

MR. CRANDALL: In this case.

MR. HUMPHERYS: The first one?

MR. CRANDALL: Yes.

Q (MR. CRANDALL) Lines 25 to 362, line 6.

Question. "Were you ever told to remove reports from files?"

Answer. "I don't recall a specific situation where I was told to remove a report. But I know of situations where that happened. But they know if they would have told me, I wouldn't have done it."

Does that refresh your memory?

A That refreshes my memory about what we were talking about, there.

Q So you were never told to remove a report that you prepared from one of your files; isn't that true?

A Well, not in what we were talking about [200] there. But there have been files where we've had estimates in there prepared by contractors where we've removed them. But see, it's being taken out of context.

MR. CRANDALL: Your Honor, I'll move to strike, and ask the witness to answer my question.

THE WITNESS: I'm trying.

MR. CHRISTENSEN: She is answering, Your Honor.

MR. CRANDALL: My question was reports that she prepared.

THE COURT: Your answer to that question is as stated.

THE WITNESS: A particular report that I had prepared myself.

Q (MR. CRANDALL) You were never told to remove that from a file; isn't that true?

A Not a prepared report. But see, to me that's something different than an activity log or a report that's been produced by an outside source. We're talking about two different things.

Q Isn't it true that even you don't believe all these wild accusations you've made about State Farm?

A I believe everything I have ever said about State Farm.

Q The real truth is you're just making these [201] caustic comments so you can continue selling your services to the network of lawyers who trade documents back and forth, isn't that true?

MR. CHRISTENSEN: Objection, it's argumentative, and it's also repetitive. I think we've heard this song about ten times now.

THE COURT: Sustained. I think you've gone through that with her before.

Q (MR. CRANDALL) Isn't it true that you've testified under oath that in the insurance industry, State Farm is considered to have the better training program?

Q Possibly.

* * *

[202] * * *

Q Do you recall your testimony in the Salin Music case versus Transamerica?

A I remember the case. I don't remember my testimony that you're referring to.

Q Is it, in fact -- That's the case that wasn't against State Farm.

A There have been quite a few that weren't against State Farm.

Q Isn't it true, the way you criticized Transamerica in that case was by saying, "I know what the standards are, because I worked for State Farm and they're the cream of the crop"?

A You'd have to show me that in a deposition.

* * *

[203] * * *

Q You think State Farm is the cream of the crop, and the proof is, you insure your house with State Farm, don't you?

A Not because they're the cream of the crop. Plus I don't have a house to insure with State Farm. I've sold them all to support United Policy Holders.

Q Is it true that, even after you left State Farm, your homeowners insurance was with State Farm?

A That's true, yes.

Q And isn't it true that your umbrella policy is with State Farm?

A That's why my homeowners is with State Farm.

Q And, in fact, your umbrella policy is the policy that provides the ultimate level of coverage, that's your personal liability umbrella protection; isn't it? PLUP?

A Among other things, yes.

Q And so even though you've said all these accusatory things about State Farm, when it comes time [204] for you to select an insurance company, you've still selected State Farm; isn't that true?

A I am insured with State Farm.

MR. CRANDALL: Thank you. Nothing further, Your Honor.

THE COURT: Let's take little stretch break.

You may proceed now, Mr. Christensen.

REDIRECT EXAMINATION BY MR. CHRISTENSEN:

Q Am I safe standing this close to a mad woman?

A We'll have to figure that out later.

Q Let me follow up with where it ended. You're insured with State Farm. Tell this jury why.

A Well, because the success protector policy, the PLUP that he made reference to, is an excess liability policy that provides liability coverage over your underlying homeowner and auto coverages. But it also provides coverage for other things, like slander, defamation, those types of things.

When I was getting ready to go to the newspaper, knowing that State Farm was so upset about the training program that I had done, I went to my agent and bought that PLUP policy, knowing State Farm, from all the years I worked for them, that they would very probably file a lawsuit against me, and I wanted that [205] coverage to protect myself. So if they sued me they would actually be suing themselves.

Q So do you keep that coverage to protect yourself from State Farm?

A Exactly, and I have to keep the underlying coverage to qualify for it. So even though I pay higher premiums, I keep the coverage.

Q Have they threatened to sue you?

A Yes.

Q Now, over and over, Mr. Crandall referred to fifty-three boxes of documents.

A Yes.

Q We didn't ask you to do what Mr. Fye has done, which was to go through documents and come in and spend a long, involved process explaining all those kinds of things in this trial. Where did you get those fifty-three boxes of documents?

A Well, from all over. Some of them have been produced in other litigation. Some of them have been sent to me by State Farm employees that are still employed by the company. Some of them have been provided to me by policy holders in their own cases.

Q Is the bulk of those documents, do they come from the Singh case?

A A big percentage of them do.

[206] Q Would Mr. Fye's -- Mr. Fye has testified he's gotten many of them from the same place. Assuming that's true, would you expect this jury's seen some of those documents?

A I can't think of any document that I would have relied on that wouldn't have been a Singh document, or produced in the Singh trial.

Q Now, Mr. Fye has gone through and carefully read and analyzed and so forth. Have you even read a lot of these documents that are in the fifty-three boxes?

A No, I haven't.

Q They've been given to you for safe keeping?

A Yes.

Q Was there a concern after the Singh case that there would be an effort to destroy those documents?

A Yes, there's still that concern.

Q Now, when State Farm attorneys took your deposition, you remember two pleasant days in March of '94?

A Yes.

Q Did you offer to let them see your documents back in '94?

A About forty times, yes.

Q And when did State Farm decide to come look [207] at your documents?

A June the 5th of this year, just this month.

Q One day after this trial started?

MR. SCHULTZ: Your Honor, I want to object to that. That is misleading. It goes, it has to do with prior court rulings regarding request for production and other things. It is misleading to suggest that we did not ask for those up until June of this year, and I object.

THE COURT: Sustained. Let's -- I know we've got a short amount of time, and I don't think it's going to advance us to go into that.

Q (BY MR. CHRISTENSEN) All right. Now, the next thing I want to ask you about is, Mr. Crandall showed you the State Farm conflict of interest agreement and so forth, referred to an investigation over conflict.

Did State Farm determine you were guilty of a conflict of interest?

A No.

Q Did State Farm do an investigation of your personal life?

A Yes. Extensive.

Q Did they even try to get into your sex life?

A Yes. As if there's anything to get into. [208] I'm sorry.

Q Did they have someone pay a maid at a hotel you were staying at to try to prove that something was going on between you and Mr. Taylor?

MR. CRANDALL: Objection, no foundation, Your Honor.

THE WITNESS: They interviewed her.

THE COURT: Lay the foundation.

Q (BY MR. CHRISTENSEN) You're aware of that. You've been told.

A Yes, I've seen the report.

MR. CRANDALL: Objection, calls for hearsay.

Q (BY MR. CHRISTENSEN) There's an eighty-eight-page report that was done on you?

A It's more than eighty-eight pages, yes.

Q You've seen it?

A Yes.

Q And is that part of it?

A Yes. I don't know that she was paid, though. I'm not testifying that she was paid. She was the maid at the motel, and they got a statement for her.

Q What did it say?

A It said that she assumed that I was having overnight guests, because my pillows were always messed up in the morning.

[209] Q Is this the best they've been able to come up with in all the efforts they've made to look into your personal life?

A Yes.

MR. CRANDALL: Objection, no foundation as to all the efforts. Argumentative.

THE COURT: I'll allow it to stand.

Q (BY MR. CHRISTENSEN) Now, you've been repeatedly accused, here, this afternoon of using United Policy Holders as a front to go out and hustle business as an expert witness.

A Yes.

Q Is that true?

A No.

Q How do you spend most of your time?

A Well, helping policy holders for free, and traveling around the country, and paying my own expenses.

Q Has this turned out to be a real financially beneficial thing to you?

A It's a drain.

Q What percentage of your time -- You've indicated a high percentage of your income comes from working on lawsuits. Is that because you don't get money out of United Policy Holders most of the time?

[210] A Right.

Q How much of your time do you spend as a witness?

A Probably somewhere around thirty hours a month would be my guess.

Q And the rest of your time would be how many hours, roughly?

A I spend at least forty hours a week on United Policy Holders.

Q Now, it's been suggested that you left State Farm because you were running from an investigation, you were disgruntled. I think it's fair to tell this jury the circumstances. Why did you leave?

A I left State Farm because we had used untrained adjusters in handling earthquake claims. And with an earthquake loss the damage is referred to as hidden damage, because it isn't real obvious. But there really isn't anything hidden about it if you know what you're looking for.

So we had all of these untrained adjusters come in, they had no training prior to the earthquake, or even after the earthquake, in how to handle a claim, but yet they were going out and they were giving out information about how these losses should be handled and how the damage should be repaired.

[211] And when we started getting in reports from engineers, and soils engineers, and contractors, we found on numerous occasions that the damage that our adjusters thought didn't exceed their deductible, did, in fact, frequently

exceed policy limits. And that in several instances, we found that we had left people in unsafe homes, sometimes for months, where it was recommended that they abandon the property, once they called in their own experts.

Q Once that was discovered, what did you do?

A Well, I insisted that we go back and review these files, and finally got management to allow me to go back and review the closed claims. So we had adjusters that came in, frequently the same adjusters that were involved in the beginning in mishandling these claims, that did an extensive file review to identify the claims that we had mishandled.

And in the area where I was supervising, we determined, in reviewing the paper file -- and that's not in getting, you know, experts called in, but just looking at the information in the file -- we determined that 56 percent of the 78 that had not reopened on their own had, in fact, been mishandled, and needed to be corrected, to the tune of somewhere close to $175 million.

[212] Q Did you try to get State Farm to remedy that?

A Yes, I did.

Q Would they do it?

A No.

Q Let me show you this document. Just to be comfortable, these aren't my cross examination notes. What is that big document?

A Well, there are actually two documents, here. One of them is a claim number listing, and the other one is copies of log sheets where we had identified what was wrong with the handling of the claim.

Q This is State Farm's own records?

A Yes.

Q And do they show that about 1,400 homes were grossly underpaid?

A Yes.

Q And that was how much money, again?

A Well, in the overall disaster it was estimated at $175 million. That was their numbers.

Q And did you insist that State Farm make that right?

A Yes.

Q And is that when you went clear to the deputy regional vice president?

A Yes.

[213] Q And would they do it?

A No.

Q So what did you do?

A Quit.

Q Did you take those documents with you?

A Yes.

Q Photocopy them secretly?

A Yes. Their word is I stole them, yes.

Q And they prove what you're saying.

A Yes, absolutely. Right down to the penny, names, claim numbers, dollar values. They prove everything that I've alleged about the mishandling of claims.

Q And when State Farm wouldn't make it right, you quit.

A That's why I quit. Actually they took me off of disaster, called in a person to review this review that had not handled an earthquake claim. But eventually, because so many claims opened as a result of me helping these people, they had to reopen their disaster office four and a half years later, as a result of the 60 Minutes piece.

Q And what did they have to pay?

A Well, I haven't been able to get that amount. They don't share that kind of information with me. But [214] I know that there were a lot of claims that reopened.

Q When State Farm wouldn't make it right, you went to the media?

A Yes.

Q And did you give them those documents?

A I didn't give them to the media at that time. I did make them available to 60 Minutes. They were a part of the 60 Minutes piece.

Q Once you'd gone to the media, did they decide you needed to be investigated some more?

A After I went to the newspaper, yes, they opened a full-blown investigation. Right down to fabric content of my clothes.

Q Now, you were asked -- Before I leave that, does State Farm, each time you appear at a case, take your deposition as you appear as a witness in a case?

A If it's a State Farm case, yes, uh-huh.

Q They take your deposition?

A Yes.

Q Do they make that as unpleasant as they can?

MR. CRANDALL: Objection, no foundation, calls for speculation.

THE COURT: Sustained.

Q (BY MR. CHRISTENSEN) Describe a typical deposition taken by Pam Levin.

[215] A Well, most of my --

Q First of all, tell us who she is.

MR. CRANDALL: Objection, irrelevant.

THE COURT: Overruled.

THE WITNESS: Pamela Levin is an attorney with a law firm in San Francisco, Thornton, Taylor, Downs and Becker, that their attorney was instrumental in the mishandling of these claims from that same firm.

After a few depositions that I did on State Farm cases, State Farm appointed Pam Levin to be the person to do all of my depositions. So wherever I go, even out of state, Pam Levin is the one that does them.

And they frequently run from three to five days, where we go over the same things, the same allegations, the same unpleasantness. They're usually videoed, frequently with in excess of two or three flood lamps, for seven and eight hours at a time.

Q Do they ask you about Roy Taylor over and over and over again?

A Yes. Even knowing that I didn't approve the claims that he got. I didn't even have the authority.

Q Now, have you gained access to an internal State Farm memo where they admit they low balled those claims?

A Yes.

[216] Q Is this that document, at least the parts that haven't been redacted?

A Yes, I have obtained a full copy of that document since then, but the part that we're talking about is in that redacted one.

Q Was this redacted by a court in California?

A Yes, it was.

Q Was this made available to the media in California?

A Yes, it was. The media is the one that petitioned the court to release it, and that's why it was redacted.

Q If your motivation for doing this was money, would it be worth it to you to sit through those depositions that Pam Levin takes?

A Absolutely not.

MR. CRANDALL: Objection, no foundation, Your Honor.

THE COURT: Overruled.

THE WITNESS: No. I don't make near the money I made working for State Farm, or that I would make with a real job. I don't make that much in the first place, and a lot of what I do make, I put back into United Policy Holders.

Q (BY MR. CHRISTENSEN) Now, you were asked [217] about handling third-party claims and so forth, and some of the time you were asked about auto claims. While you were in claims at State Farm Fire, were you involved in a number of personal injury claims?

A Yes.

Q Would it be hundreds?

A Oh, yes.

Q Could it be over a thousand?

A Very probably, in the years that I was there.

Q So even though most of your work was fire claims, you still did a lot of bodily injury claims.

A Yes.

Q Where people were making claims for being hurt.

A Yes.

Q Now, you were asked at what level you reached, and apparently it was this.

A Yes.

Q That was, in claims and underwriting you had a different title. Of this group of people, who's out there actually settling the cases?

A Well, from claims specialist, or senior claims specialist, down.

Q Are these the people out dealing with the public?

[218] A Yes.

Q Are these the people that actually implement the unfair practices that you've described?

A Yes. Well, they're a party to it. Sometimes it's at someone else's direction, but yes.

Q What I mean by implement, you may have these people tell these people what to do, but they're the ones that actually go out and settle the claims.

A Yes.

Q So you were aware, to use Mr. Fye's term, you were where the rubber meets the road?

A Yes.

Q Now, you were asked about a video tape you made at State Farm. Describe that, please.

A Well, State Farm didn't have a training program for adjusters and how to handle earthquake damage. So after a few months, when every twenty-eight days you get in a new group of adjusters that need to be trained, so after a few months I went out and bought a camcorder, and got three different contractors to help me. And we made a training film of how you should go about scoping a building for earthquake damage. And what was involved in the repair.

Because these adjusters are the ones that were writing the estimates for how to do the repair, and [219] you can't write an estimate to do a repair unless you know what the damage is, and what needs to be done to correct the damage. So this showed actual damage, and it showed -- By that point we knew how to do a repair, and there was an area in Watsonville where it was at all different stages, from total destruction, to repaired and being lived in again.

Q Let me see if I can shortcut this, in the interest of time. Was your motivation in making the video to try to help the adjusters do a better job of finding the damage done by the earthquake?

A Well, it was twofold. To help them better identify it and address it, or to at least know that it was there, and to know enough about it to know that they needed help. But if they didn't know how to address it, to at least get qualified help to them.

Q Was the effect of that video to raise the average pay per claim on those claims?

A Probably about ten times, yes.

Q So once the people were trained, they found more damage.

A Exactly.

Q So what did State Farm do when they discovered that?

A They had a tizzy, ordered me to turn the [220] video over, stop using it. They confiscated it, and the person that confiscated it agreed later in a court that he had never seen the video, even though --

MR. CRANDALL: Objection, Your Honor, hearsay.

MR. CHRISTENSEN: All right, let me move to another area.

THE COURT: Sustained as to hearsay.

Q (BY MR. CHRISTENSEN) You gave Mr. Taylor a birthday party?

A Yes, I did.

Q And he apparently gave you a TV at some time. Was that a birthday gift to you, or what?

A It was a birthday gift, yes. I gave several birthday parties.

Q Not just for Mr. Taylor?

A No.

Q Are these people all living away from home for an extended period, working on the earthquake claims, not all, but a number of them living away from home?

A Almost all of them were, yes.

Q Did that have something to do with why you gave parties?

A It had everything to do with it.

[221] Q And did you invite people to dinner on Friday nights?

A Well, we didn't usually do them on Friday nights, because they had better plans than coming to my apartment for dinner. But usually one day during the week, and we'd invite anybody that needed a home-cooked meal.

Q And you'd cook it?

A I'd cook.

Q Did you charge people for that?

A Sometimes I paid for it, other times, depending on what the menu was, we'd have them all kick in a given amount.

Q And this is the conflict of interest that violated this policy that you're being accused of?

A Yes.

Q Didn't you do an analysis of the payments on the earthquake claims to see how women fared, as opposed to men?

A Yes.

Q What did you conclude?

MR. CRANDALL: Objection, irrelevant, Your Honor.

THE COURT: State your response.

MR. CHRISTENSEN: Well, she's testified [222] earlier that she determined that women are paid less than men, and this is the background for that. I didn't get into it earlier because I didn't feel like I could get into the earthquakes until they opened the door, but now they've opened it.

THE COURT: I'm going to overrule, but I think the door was opened on that issue.

Q (BY MR. CHRISTENSEN) What did you conclude?

A That women receive 74 percent of what men receive.

Q And did you do an analysis of how people that trusted State Farm, as opposed to those who went and got outside advice?

A Yes.

Q And what did you determine there?

A People that relied on State Farm's estimate of their damage got 42 percent of what people received that didn't trust State Farm and hired their own experts. So about two and a half times.

* * *

[223] * * *

RECROSS EXAMINATION BY MR. CRANDALL:

Q Isn't it true that the reason why you concluded that the original estimates on the earthquake claims were underestimates is because Roy Taylor told you that there was subsurface damage, foundation damage that wasn't visible to the eye?

A No, absolutely not. We started reopening claims long before I ever heard his name.

[224] Q Roy Taylor is the person who provided you with the reconstruction figures on those houses; isn't that true?

A Oh, no. No, it isn't true.

Q Did he participate with you?

A Months later he shared that belief. But he didn't participate with me.

THE COURT: Let her finish.

Q (MR. CRANDALL) When you submitted your report to State Farm that you have in front of you, that's based on figures provided by Mr. Taylor, who was going to do the reconstruction work.

A Oh, no. Absolutely not. Not even close to true.

Q And those records don't state his name throughout, and his company?

A No. Absolutely --

Q And estimates?

A No. Absolutely not.

Q In fact, Mr. Taylor was the one who gave you many of the figures upon which you based your analysis; isn't that correct?

A Oh, no. As a matter of fact, when they made a big deal out of the disproportionate number that he was involved in, out of over more than 8,000 claims, he [225] had been involved in eight of them. That's like .001 percent or something.

Q You relied on his advice in a number of cases because you weren't the one who picked the contractor, or the insured picked the contractor; isn't that correct?

A It's the insured that signs with them, but it was Mr. Villama, the superintendent that worked out the arrangement to work with Roy Taylor, and approved all those claims. I didn't have that kind of authority.

Q Because -- But he was on the top of the list, wasn't he? He was the first name on the list that was given to the insureds?

A I believe when they put out the contractor's list, because he was new to the area, and we knew that the others on that list were no longer taking new jobs, I think Mr. Villama had him put to the top of that list. I didn't put him at the top of the list.

Q Another quick subject. Before the earthquake ever happened there's been a number of claims where State Farm fixed people's homes and later found other damage, and supplements were submitted and they fixed them; isn't that true?

A There are supplements made on claims on occasion, yes. If people know they're entitled to it.

[226] Q And, in fact, State Farm has a position called reinspector; isn't that right? To reinspect damages?

A That is -- They have that position, yes.

MR. CRANDALL: One final point, Your Honor. I found the Saline Music case. You asked me to read you your deposition, I'd like to read the deposition testimony.

MR. CHRISTENSEN: I'm going to object to this as beyond the scope of redirect.

MR. CRANDALL: It goes to -- It's the deposition I couldn't find earlier.

THE COURT: I'll allow you.

MR. CRANDALL: Okay. Page 118, over to 119 line 3, then I'm finished.

The question is, "Do you consider yourself knowledgeable about the claims handling practices of any company other than State Farm?"

Answer. "Knowledgeable, in the sense that you're using, may not, you know -- To have discussed and know that in the industry State Farm was considered to have the better training program. And I'm not trying to avoid your question, I just don't think I can answer it."

Question. "Okay."

[227] Answer. "And it was always, when you worked for State Farm and you were an adjuster for State Farm, and you started talking about other companies' practices and pay and training, you always felt like you were kind of the cream of the crop."

Thank you, nothing further.

THE COURT: Anything you want to add to that?

MR. CHRISTENSEN: Just a quick followup.

REDIRECT EXAMINATION BY MR. CHRISTENSEN:

Q Could that answer he just read be fairly interpreted as meaning that you think State Farm was fair in the way it treated its claimants?

A No, and that isn't what that's even addressing. It has nothing to do with that.

* * *

[228] * * *

(The jury left the courtroom.)

* * *

[231] * * *

MR. BELNAP: Yes, there is. We ought to make a quick record of a couple of bench conferences that took place regarding Ina DeLong's testimony during direct. If you want to do that tomorrow.

THE COURT: How long do you think it'll take? I guess what I'm looking for is whether --

MR. BELNAP: And secondly, Your Honor, there's been, you know, at times through this case requests for things that have been discussed, and witness DeLong discussed a case which was in her direct [232] examination, which was obviously a fire company case, a slip and fall in a business. We've never been given that case, Your Honor, and I think it also goes outside the court's order.

THE COURT: I was waiting for an objection to that case, because it was clearly-

MR. BELNAP: We discussed it at bench, and thought that, I guess thought that that had been ruled on, that that could happen.

THE COURT: That clearly wasn't my position. So make your proffer. What I thought I was saying on bench was she could testify as to auto company matters based on the foundation that was laid, and leave that to cross examination.

But I certainly wasn't inviting a bunch of non-auto case claims to be brought up. And that matter was not objected to, so I didn't do anything with it. But I thought that you were being somewhat generous allowing her to testify about it.

MR. CHRISTENSEN: Your Honor, I thought -- and I obviously misunderstood -- I thought the court had said as long as we laid the foundation that the method and practice was the same for fire and auto, that we could go into that. Otherwise I would not have gone into that.

[233] MR. CRANDALL: And that was my understanding, why I didn't object.

MR. CHRISTENSEN: I don't want the court to think I was trying to do an end run with that case.

THE COURT: Well, I didn't even think that you were directing her. She found a case and gave an example, and I was waiting for an objection that didn't come.

MR. CHRISTENSEN: I think that's right.

MR. CRANDALL: That's her deposition example. That's her standard example, though. I mean we knew it was coming.

MR. HUMPHERYS: Well, okay. Then what is it you're asking for, for more information about it?

MR. CRANDALL: We'd like the file.

MR. CHRISTENSEN: You've got the file. Why don't you give it to us?

MR. CRANDALL: We don't have a name or anything.

MR. CHRISTENSEN: You obviously have heard it several times.

MR. CRANDALL: I heard it at the deposition.

MR. CHRISTENSEN: We don't have the file. Maybe that makes it simple. Obviously. How would we have that file?

[234] THE COURT: If I understand it correctly, Ms. DeLong has given access to all the files she has, and she's here in the courtroom. I don't have any objection to asking her if she knows the file name.

MR. CHRISTENSEN: Do you have that file?

THE WITNESS: It's a claim, Your Honor, that State Farm has, and I don't remember the woman's name on it. But I was able to give them the time period, so they could go back and find it.

THE COURT: Is it your testimony -- You're not -- I'm not -- This is not testimony, but I'm just inquiring. Would it be accurate to say that you've given what information you have, and you don't know anything more? Or would there be anything more you could give State Farm that would help you find that file?

THE WITNESS: I can't think of anything else. I could give a description of where this woman lived, and I can give them a description of where the store was where she fell, and I don't know if I've done that before, but it was an actual claim file. And I don't have it in any of the information.

MR. CRANDALL: If the store's the insured, that would help. Was the store the insured?

THE WITNESS: Yes.

[235] MR. CRANDALL: That would help.

THE WITNESS: It was at the corner of Camden, I think, and Blossom Hill.

MR. CRANDALL: Do you know the name of the store?

THE WITNESS: No, I don't.

MR. CRANDALL: What city is that?

THE WITNESS: San Jose.

MR. SCHULTZ: Your Honor, I think, just for the record, it sounds to me like the understanding was that a ruling had been made that she could go into that case. And for that reason no objection was made when she did.

And to that extent, I think we need to make a record that her testimony in that regard was outside the scope of your original order on testimony of any non-auto files or claims, and that that should not have been allowed, and that should be stricken.

MR. CHRISTENSEN: I don't think the ruling was that she could go into that case. It wasn't that specific.

MR. HUMPHERYS: I don't even think that case was discussed at the bench.

MR. SCHULTZ: I'm not talking that it was discussed, but it sounded to me like both Roger and Jim [236] were under the impression that she was going to be allowed to testify to non-auto cases based on the bench conference. And for that reason no specific objection was made when she started on it. And to that extent, we have to make our record that that was objectionable.

THE COURT: Well, counsel, I'll allow you to make your record, but I'm not going to put myself in a position of, based on what you said you thought I said, of saying that that was, there was an objection, when there wasn't an objection to that file being raised.

I was trying to address every objection as cleanly as I could possibly do so, and wasn't, I think, in any way, I hope I wasn't discourteous when objections were made, I just attempted to rule on them.

And that, to me, was a fire company case, and if an objection had been raised it would have been my intention to have sustained the objection. I didn't believe that I had said, "You can ask about fire company cases." What I thought I said was a foundation has been laid in which I believe she can testify as to auto company matters and auto and fire company matters in which she is saying that the policy is the same, but not as to just unrelated fire company cases.

Nothing came up about that previously, and that was the first straight auto company, fire company [237] case, that I thought was just sort of straight out presented, and I was sitting here listening, waiting for an objection, and nothing happened. And so I figured, well, so be it.

MR. CHRISTENSEN: And that was understanding that the ruling was general, as you said, not specific as for that case.

Our position, obviously, is that since the auto company owns the fire company, and there's been a lot of evidence they control them in their policies, and their policies and practices are the same, that we should be allowed to get into that.

They got, they made into very extensive examination with Mr. Crowe that lasted an hour or two, where they used testimony, they put on the screen, of his experience with the fire company, and all the good things he'd said about that. So certainly our position, the door was opened, and we could have gone into a lot more with this witness than we did. And I want to make that clear. That we haven't laid that position.

But my prior statement was simply to assure the court that I was not trying to circumvent any instruction we've been given. And I think you're right, I think the witness volunteered it. I don't think I asked for the case.

[238] THE COURT: No, and I think that's where it became difficult for counsel. Let's be sure we can make whatever record we want to make. I don't want to foreclose anyone from that.

MR. CRANDALL: Our position simply is that we'll make a motion to strike all of her testimony about that fire company case, because it was beyond the scope of the court's order which limited her testimony to auto company cases.

And I do have to agree with Mr. Christensen, it was my understanding from our bench conference that he had laid, you said he laid a foundation that the auto company and fire company practices were so similar that, and he could go into auto or fire company practices.

And that was my understanding, and for that reason I didn't make what I perceived to be a useless objection to what I perceived to be prejudicial evidence.

MR. HUMPHERYS: Your Honor, I think the issue is moot anyway, because in cross examination counsel went extensively into the issue of fire claims and earthquake claims. So I think at this juncture the horse has long been out of the gate.

THE COURT: In terms of where we were on redirect examination, I felt -- and there were not [239] objections made there -- but it seemed to me that, with the exception of one, I think the response to it was one that I was anticipating, that is the door was opened.

It seemed to me that the door was widely opened by allowing a very aggressive and far-reaching cross examination, something that I think Mr. Crandall handled, obviously, very knowledgeably.

And to me, I think perhaps you've hit it, Mr. Humpherys. Whatever the status of that case was, once the court, once we passed to cross examination, I think the door was opened

widely as to the various claims that she handled, and I would think that it would be moot. And I think that the point of going back to the jury and saying, "Disregard this segment of the testimony," I think, given the breadth of the cross examination, would be inappropriate because of the argument of mootness.

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EXCERPTS OF TRIAL TESTIMONY OF JOSEPH W. ESCHELMAN, JULY 19, 1996

[Vol. 27, R. 10282, commencing at p. 95]

* * *

JOSEPH W. ESCHELMAN called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

[96] **DIRECT EXAMINATION BY MR. SCHULTZ:**

Q Would you please state your full name.
A Joseph Walter Eschelman.

* * *

[97] * * *

Q Are you presently employed?
A Yes.
Q Who is your employer?
A State Farm Insurance.
Q How long have you been employed by State Farm?
A Eleven and a half years.
Q So beginning when?
A January, 1985.
Q And to the present?
A Correct.
Q And in what office are you presently employed, Mr. Eschelman?
A I'm in the Mountain States regional office in Greeley, Colorado.

* * *

[99] * * *

Q And what is your present position?

A I'm currently the director of management planning and information.

Q And how long have you held that position?

A About one year.

Q Do your duties in that position involve work with statistical data of State Farm?

[100] A Yeah, that's one of the primary duties, is dealing with all of the numbers that we deal with on a day-in and day-out basis.

Q And in your work as a data processing manager and these various other positions that you've talked about over the last eleven and a half years, have you become familiar, as perhaps changes or modifications have been made in data compilation, have you become familiar and had the opportunity to be trained in the statistical data with respect to bodily injury claims?

A Well, when you talk -- When you talk about claims, when I was in data processing part of the job, a couple of times during my career, we implemented new automation throughout all of our claim offices. And part of my job was to know what my customers were going through. And so I sat through several training courses on how the data was input and compilated in the claims offices.

Q And specifically, are you familiar, through your training and job positions, with statistical data regarding third-party bodily injury claims?

A Yeah, in my current position I've done the research and followed how bodily injury claim numbers are tracked in, those lawsuit numbers on bodily claim injuries are tracked from input to report.

[101] Q Okay. Let me show you, Mr. Eschelman, a document that has been identified as Defendant's Exhibit 152-D. Can you identify what that document is?

A Yes, this is a document I put together on just claim -- Let's see, reported claims for Utah and company wide for years 1980 through 1994, from the computer system I have in M, P and I. M, P and I stands for management, planning and information.

Q Does this involve anything besides auto third-party bodily injury claims?

A No, BI would be only third-party injury claims.

MR. SCHULTZ: We move to admit that as an exhibit, Your Honor.

MR. HUMPHERYS: No objection.

THE COURT: Received.

(WHEREUPON Exhibit Number 152 was received into evidence.)

Q (BY MR. SCHULTZ) Just for the benefit of the jury, let's see what this is exhibit is, Mr. Eschelman. It says '78 to '95, but it's just '80 through '94; is that correct?

A Yes, the numbers on here were '80 through '94.

Q And the jury has previously seen just some [102] total numbers. This exhibit simply identifies the number of claims on an annual basis; is that correct?

A Right, that would be for the full years, those are the reported claims for Utah and company wide.

Q Now, how did you obtain that information?

A That's part of the statistical information that's available to management planning through the regular course of business, where, you know, statistics is part of our job, and it's just one of the many things we have access to.

Q Where does this data, to your knowledge, the actual data come from, so that you can then bring that up and find the total numbers?

A The data originates in each of the claim offices around the country, and then it is compiled and sent via computer link through several processes to our corporate headquarters, and then our corporate headquarters puts together the database together for me to look at.

Q Is the data that you have in your system from which you are then able to prepare this document, is that data compiled in the ordinary course of State Farm's business?

A Right. That's just regular business, they run regular flows on nightly, monthly, and quarterly [103] bases just to update all of the databases and transmit the data to corporate headquarters.

Q And is it data that you rely on in the ordinary course of business?

A Yes.

Q In your work?

A Yes, that's pretty standard data that's available.

Q The data itself, although the document was prepared for purposes of this lawsuit, is the data that's represented in that exhibit, is that prepared for purposes of litigation?

A No. The data that is available on the system is just used to do research requests, just keep track of general information, you know, it's been there since I've been there. It's just a mix of information, including number of employees, and policies in force, and earned premium, and just all kinds of general business numbers.

This report was developed specifically for an exhibit here, but --

Q This summary?

A This summary was, but it was just part of the general information available.

Q Now, in the course of your work with State [104] Farm in data processing and management planning, have you become familiar with a document entitled the BI, the total auto BI lawsuit report?

A Yeah, I call it the BI suit summary report, but yes, I have.

Q Okay. Now, Mr. Eschelman, let me show you what's been marked as Exhibit 153-D and ask you to take a look at that, and ask you if you could identify what that exhibit is.

A Yes, this is the suit summary report you were referring to, and I was referring to.

Q Okay. And if you would just take a look at that, does Exhibit 153-D appear to be the BI lawsuit reports for the years 1980 through 1994?

A Yes, all those years are here.

Q Okay. Now, can you explain how the data--and we're going to look at this more specifically in a minute--but I just want you to explain generally how the data that is included in those lawsuit reports is generated, and just the step-by-step process through which that ends up in the form that it is now.

A Okay, this is a company-wide report, but all of the data is entered at the individual claim offices. Any time a lawsuit is open in a third-party BI lawsuit against one of our insureds, we open a record on it in [105] the claim office. Then nightly, through regular flows, they send that data to the regional office.

And then each quarter, data processing is required to transmit this data to our home office by the tenth working day. It's a due date item that we have to have there. And then corporate headquarters, they take all the input from all the offices around the country and then they put together the one company-wide report for dispersal around the country.

Q And does the regional office where you work receive a copy of the actual report?

A Yes, we receive a copy of the company-wide report.

Q Is there any kind of -- Well, let me ask you this. Are these BI lawsuit reports prepared in the ordinary course of State Farm's business?

A Right, they've been around, it's my understanding they've been around since the early seventies, and I've seen them for the last two years in my positions in Mountain States.

Q And how -- Well, with respect to these documents, then, were these documents that comprise Exhibit 153-D, were they prepared for this lawsuit or any other lawsuit, to your knowledge?

A No, to my knowledge they're just an internal [106] management tool to see how we're doing in the cases that go to trial, number filed, just kind of as an internal document to see how we're doing.

Q Do you use these documents in the ordinary course of business in your job?

A Yes, I get them in and I review them. Just for me it's more informational purposes, but yeah, it's just part of the regular job.

Q Do you, in your job, in the ordinary course of business, rely on the data that's in these documents when you get them?

A Absolutely. With this report, and the hundreds of reports we look at, and I rely on that they are accurate and reliable.

Q Is there any kind of, just generally speaking, is there any kind of auditing function that is done at State Farm with respect to the reports?

A When you talk data in general there's several different layers of audits that go through. I don't know what this report goes through, but from data processing I know for a fact we have a very extensive internal audit department. We actually hire an outside accounting firm to look at how we, the ways we capture data, store it, who has access to it, as well as a due date process. And that's to make sure regions get data

[107] to our corporate headquarters in a timely and accurate manner. Because we do rely on that data to be accurate so we can make good management decisions.

Q You're not saying you've tried to, on your own, go out and check all six million BI claims to see if that's really how many there were, right?

A No, I haven't tried to do that.

Q But you're saying that this is data that's compiled and put together in the ordinary course of business, and you personally, in your work, do rely on?

A Yes, absolutely.

Q Okay. Are you familiar with the columns on the documents that have been identified as Exhibit 153-D, what they represent?

A Yes, I am.

MR. SCHULTZ: I would move to admit Exhibit 153-D, Your Honor.

THE COURT: Any objection?

MR. HUMPHERYS: We object to the numbers, but we have no legal objection to the exhibit. In other words, we object to the content, but I think he's laid foundation.

THE COURT: All right. Received.

(WHEREUPON Exhibit Number 153 was received into evidence.)

[108] Q (BY MR. SCHULTZ) Mr. Eschelman, I would like you to -- Sorry to put this so close, but we've got a very small numbering system, here. And I don't expect you all to be able to read this. But I do want you, Mr. Eschelman, to come down and just explain what these columns are, if you would. This is just an enlarged copy of the 1993 bodily injury lawsuit report; is that correct?

A Correct.

Q Okay. Now, I guess what we ought to do is start on the far left side. Sorry to block you out. And first off, again, Mr. Eschelman, this report shows numbers for what kinds of claims?

A This would be for lawsuits that are derived ABI lawsuits, third-party lawsuits, somebody suing the State Farm insured.

Q Now, the exhibit that I put up here on the overhead projector, what does that show, as opposed to what this shows?

A See, this is a regular report that comes to me from the management at corporate headquarters and they put that all together. The report that you put up on the screen was just one that I can pull up on my computer, you can store it, the coverage and what you want. And that one I just selected, giving BI claims [109] reported, and I can select either a state or division or company wide. So that was one I put together, and this is one that is just --

Q This one, for example, let's look at -- Okay, over here, the first column after the names of the state division says "file."

A Right.

Q Do you see that?

A Right.

Q What does that refer to?

A Most of the columns are pretty straightforward, just like the first one, and that is just lawsuits filed in that division, so that would be any time somebody would sue one of our insureds rising out of a BI claim they would enter a number saying, "Hey, a suit's been filed on this claim." So that's numbers of suits filed.

Q And that represents the number, then, of third-party BI lawsuits filed during calendar year 1993?

A Right. We get this report twice a year, we get it at six months, and then this would be the year-end report that says as of the last, as of December, 1993 that was the count.

Q Now, the exhibit up here on the overhead projector, number 152-D, that just said auto, total auto [110] BI claims.

A Right.

Q So did that include claims that were lawsuit, where lawsuits were filed, as well as where lawsuits were not filed?

A That reported any BI claim that was open that was filed. Any claim, regardless of disposition from that point during that time period.

Q Now, do either of these exhibits, either 152-D or 153-D, include numbers for lawsuits filed against State Farm Insurance Company, where State Farm is named as a party?

A Well, the short answer is no. That one up there was just reported claims, and this is just simply for claims against our insureds.

Q Can you give an example to the jury so we're clear on what is reported here, and what is not reported?

A Let's just take a Smith and Jones. Smith is the State Farm insured, they have an accident with Jones. If Jones reports a claim, it shows up as just a reported claim. If Jones suits Smith, it would show up and here as a filed case.

And if anybody sues State Farm, since that has nothing to do with our insureds, that is not on this [111] statement. This is really just, you know, these are the cases where we're defending our insureds, because they're being sued.

Q Now, let me follow up on that. Let's assume that Jones does sue Smith, and Smith is a State Farm insured, and that case goes to trial.

A Right.

Q Over here we have a couple of columns that say, "cases tried to verdict." You see that?

A Here's "total went to trial," right here, so out of all the numbers that were filed, thirty-one went to trial.

Q In that one particular region?

A In that one division during the year.

Q And then over here, is there a record kept of how many of those cases that went to trial, and there was actually a verdict, which ones were won in favor of the State Farm insured, and which ones were lost?

A Right. So out of that thirty-one that went to trial, you can come over and say twenty-three were won and eight were lost.

Q In that particular area.

A Yeah, in that specific division. And it does that for every --

Q Now, do you understand what it means, or what [112] is required for a case that is tried to verdict to be considered a win?

A Yes. Anything, any verdict where judgment is for less than or equal to what State Farm had offered prior to the trial, that would be considered a win, or if the case was dismissed.

Q Okay. When you say dismissed --

A I'm sorry, not dismissed. If it was ruled in favor of our defendant. Because there's a separate column for dismissed.

Q In other words, if the defendant got nothing.

A Right.

Q If the plaintiff got nothing, that would be a win.

A Right.

Q Okay. Now, if this case were--we've talked just hypothetically--Jones versus Smith, and Smith is a State Farm insured, assume that Jones wins the case against Smith, and not only gets a judgment in excess of State Farm's offer, but gets a judgment in excess of Smith's policy limit with State Farm. Now, do you have any understanding as to whether or not that would be included on the report as a lost third-party BI case?

A It's on here, if it was tried, regardless of the verdict. The one loss is basically based on our [113] State Farm's offer at the end. So if it was an excess verdict, that information is going to be tracked all the way through here. So how it would show up here depends. The win-loss is strictly on the money we had offered prior to trial.

Q But if a jury returned a verdict for more than Smith's policy limit, that particular loss would show up as one of the eight, for example, here?

A Right. And I'm assuming State Farm would have not offered more than their policy limit. I just didn't want to --

Q We assume that. Let's take that assumption one step further, and let's say that Smith then sues State Farm as a company for the excess verdict, or some other extra contractual damages. Now, would that case be tracked under this report?

A No. Since this is a management tool for, really, claims management, to see how well we're doing defending our insureds, that wouldn't be on here. And specifically this is really a focus report on BI lawsuits. So no, that would not be on it, suits against the company.

Q Now, let's just -- I would just like you now to quickly explain what each column is so the jury understands what these things mean.

[114] A Okay. We talked about cases filed --

Q Hold it up closer.

A Then there's cases closed. And that says simply cases that were closed for any means throughout the year.

Pending, that's just those outstanding, those that haven't gone to trial, haven't closed.

Total tried, that's just the number of trials that took place during the year that came to a conclusion.

"ADR" stands for alternative dispute resolution. So out of those that closed, twelve went to alternative dispute resolution.

"STLD" stands for settled. So those were settled before they went to trial.

Dismissed are simply dismissed, you know, there was no court case.

"OIE" stands for opened in error. And we just tracked, somebody made a clerical error and they tracked this, and they found out they shouldn't have done it, they close it out. We still track. We said, "We open this many, let's track where they are."

Then we go into a lot of different percentages. Out of those that were closed, what percentage of those went to trial? So you give the [115] percentage across the board. And it just does the simple math. It takes, you know, the percentage closed and it's divided by the trial.

And then the next one is percentage that went to alternative dispute resolution, and how many, what percent of the closed are those. And then settled, back, dismissed. Then it -- So that's all just the simple math, dividing closed by how the breakdown goes.

Then it goes to cases that went to, tried to a verdict, and we already talked about that, and we list them as won or lost. And then we break down the percent we won, and then in the last column they break down alternative dispute

resolution in the same category, percent won and percent lost and percent settled with a number. They don't use that percent.

Indemnity payments at the end basically just takes all the verdicts and all the payments from all of the trials, all the closed -- and I'm mistaken it's not all the trials -- anything we paid across the board on settled, alternative dispute resolution, anything like that, it just totals that dollar amount and you get a whole dollar amount on how much was paid out.

And then average closed cost is just simple math, of taking the indemnity payments, total dollars we've paid out, and divide that by the number closed.

[116] Q Okay. Thank you. You can take your seat.

Now, Mr. Eschelman, have you seen any of these report forms, here, that, like this one, that have a column that is entitled "months in litigation"?

A No, I have not seen any of them with a column that say months in litigation.

Q There has been some testimony here that there was a general claims memo that indicated that information was going to be kept during a certain period of time.

A Right.

Q And have you had -- Are you familiar with that?

A Yeah, I read through the claim memos, and it looked like in 1988 they thought that might be a good thing to track, but they never added a column for it. And I think in 1995 they stopped keeping track of it.

* * *

[119] * * *

Q Okay. This chart here is entitled average paid cost, collision claims.

A Right.

Q What does that represent?

A That just represents the average we paid to insurers on each collision claim, so that's how much the payments have gone up.

Q To the insureds themselves.

A Right. That has nothing to do with expense, it's just how much they received.

Q Again, this tracks it from '80 through '94?

A Yes.

Q And last, this one is identified as average [120] paid cost, BI claims?

A Right, that's the average we've paid out for each bodily injury claim company-wide.

Q And this is the payments being made for all claims, settled or tried?

A Right. If we paid it, it's there.

Q Regardless of whether there was a lawsuit filed or not?

A Correct.

Q Okay. And again, this goes from 1980 through 1994?

A Correct.

Q Now, honestly, I think I had a couple more of these, but I'm not sure where they are. But did you prepare an average adjustment expense for the BI claims, as well?

A Right, I did.

Q But was it basically done the same way?

A Yeah, all of these are the same way. It's just on the computer system we have that has all the stats, we can get how much was paid out, how much expense we incurred, and we can get it as a total if you want to look at all claims, or we can break it down by coverage.

* * *

[121] * * *

Q When I had this document up, you did indicate that in the loss column you'd include a third-party BI claim that resulted in a verdict in excess, or a [122] judgment in excess of the policy limits, just as one of the numbers.

There isn't a specific column or report to say exactly how many excess verdicts or judgments have been entered against State Farm insureds, is there?

A No, there's not a column listing those.

* * *

CROSS EXAMINATION BY MR. HUMPHERYS:

* * *

[123] * * *

Q Do you know to what extent the State Farm employees are given incentives to try and win cases?

A The handling of legal matters, cases, incentives along that way, I'm not even sure they do, but I don't know of anything in that matter.

Q You're not really qualified to address that [124] issue, are you?

A Well, not directly.

Q Just from a statistical standpoint?

A From a statistical standpoint, no.

Q There's no way that you can personally verify whether the offers made before trial were, in fact, more than any particular verdict, can you? You personally?

A Well, when you say personally, I can't go out, and didn't look at what the offer was on each one and look at it. But I do know that I rely on the information to be accurate. I know claims management does, because, I mean for any report, and I look at hundreds of them, to be useful as a management tool, they need to be accurate.

Q Right. Do you know of any independent review to determine whether, in fact, there were valid offers made in all of these claims that exceeded the verdict? Do you personally have knowledge of that?

A Personal knowledge on every one that is listed on there as a win?

Q Right.

A Right, if you look there's thousands and thousands of those, and I wasn't out in each one of those, no.

Q So when you're talking about how you prepare [125] this and so forth, you're not trying to swear to the accuracy of each of those numbers, are you?

A Right. I was not out in each one of our 835 claim offices and look how they input each one. You know, I rely on the accuracy, as does claim management. But no, I did not see this is what they offered and this is what the verdict was.

* * *

[126] * * *

Q Now, tell me, in any of these reports, Mr. Eschelman, tell me, where is there any compilation about what State Farm first offered before having to go to trial? I mean the first offer, even before the lawsuit was filed, where's the data compiled about what they first offer the claimant?

A That data is not tracked on this report. What they do track is just basically lawsuit, tracking it through the system, and verdict versus last offer. But we --

Q Is there any column, and does State Farm keep track, to your knowledge, of what percent the first offer is, versus the last offer just before trial?

A You know, I'm not sure when they track the offer, what is offered, what's first, last, middle. I've never seen a report that tracked that when they looked at lawsuits.

Q If management were trying to evaluate whether they were making fair offers, Mr. Eschelman, wouldn't they want

to know what their first offer, let's say first offer was, versus their last offer? Or do you [127] even know anything about claims in order to answer that question?

A No, when I look at it I know one of the things they want to do is be fair up front, and so that's why I would think that they would want to make the best offer first. I mean because you just incur --

Q That makes sense, doesn't it?

A Yeah.

Q What report do you know of that State Farm compares these two figures?

A You know, I don't think I've ever seen a report where they compare those figures. I don't know if that's available, if it's tracked individually. It very well could be. It's just when you deal with regional data and company-wide data, I think on this report it had 9,500 cases, and I mean I can understand numbers when they look at 9,500 and get percents, but to look at 9,500 cases just wouldn't be my job.

Q Now, like you say, it would be important if a company were to try and understand whether they're doing their servicing and payments accurately to not only track this, but wouldn't they also want to try and track how long it took them to make the last offer from the first offer?

A You know, they may do that at a local level, [128] and when we talked about that they had entered a field for months in litigation, you know, at the individual claim office level, they look at that data. On this report, it would be meaningless, in numbers that I would not understand.

Q What I'm asking you is, are you aware of any report generated by State Farm management, or for any other purpose, that tracks how long it is between their first offer and their last, and comparing how much different their first is from their last?

A I've never seen a report like that.

* * *

[129] * * *

Q Now, let me give an example. We, the jury heard a few days ago, or maybe a week or more, about what's been referred to as the VanOrden case, and there was evidence that this was a good example of how State Farm would have a win. They had offered $15,000 before trial, but then offered, or excuse me, the verdict came in somewhere around $5,000. That would be a win in [130] State Farm's record, right?

A Yeah, that's how they would count a win, that the verdict was less than the offer before trial.

Q But we also heard evidence that in that case, there was no offer for nearly six years by State Farm.

MR. BELNAP: Your Honor, that misstates the evidence in that case. We went through the date that that was filed, and we showed you the civil number and --

MR. HUMPHERYS: Well, that was the civil number. I'm talking about the date of the accident. I believe the evidence was 1989.

MR. BELNAP: There's no facts --

MR. HUMPHERYS: The first offer --

MR. BELNAP: Excuse me. Are you finished?

MR. HUMPHERYS: The date of the accident, on their own letter that they were using, was 1989. The offer, first offer was made January of 1995. Or February, right there.

THE COURT: And the case was filed in '93?

MR. HUMPHERYS: The case was filed in '93, that's correct.

MR. BELNAP: Your Honor, I'd just like to say that it assumes facts not in evidence, that there was ever a demand made before the lawsuit, and that's -- [131] Therefore there's no foundation for the question and for this witness.

MR. HUMPHERYS: Well, I think there was evidence of the fact that there was clear liability, it was a rear-end

collision, and that State Farm had made no offer until a month or two before trial.

THE COURT: I'll allow it on that foundation.

MR. SCHULTZ: Your Honor, I object, it's an incomplete statement of the facts, too. It doesn't tell anything about what the demand was, and the time --

MR. HUMPHERYS: They're welcome to cross examine it. I'm addressing it on a very narrow issue as to State Farm's first and last offer.

THE COURT: Well, I don't know if there's any foundation that this witness knows anything about that case. So I will --

MR. HUMPHERYS: But I'm trying to tie it in on how an example like that would track on his report. That's what I'm trying to do.

THE COURT: Just ask him a question that would indicate what is on that report and what isn't on that report. But don't relate it to a case where we have controversy on what the facts are.

MR. CHRISTENSEN: Why don't you just use a hypothetical?

[132] MR. HUMPHERYS: I'll do that.

Q (BY MR. HUMPHERYS) If, in a case, there was clear liability, there was contested damages, but State Farm had not made any offer for six years, until just before trial, and then they made a offer of $15,000, and the verdict came in around five, that would be considered a win, would it not?

A Right, that any verdict less than our offer is considered a win, you know, because circumstances up to that point vary widely.

* * *

Q (BY MR. HUMPHERYS) Now, let's talk about first-party and third-party claims, in terms of what's in this case, so that we understand fully.

Whenever -- For example, if I were to have a dispute with State Farm regarding how much they paid on my car, and they weren't offering enough, and I filed [133] suit against State Farm under the collision loss, that would not be in here, right?

A Right. Any suits against State Farm are not in there.

Q And for PIP or no-fault benefits, it wouldn't be in here, would it?

A Right, this is BI only, and suits against our insureds.

Q And it wouldn't be for uninsured motorist coverage, or any kind of first-party coverage. If there were a lawsuit, nothing would be in here, right?

A That is correct, since that's limited to BI.

Q Mr. Eschelman, I'm having a hard time understanding. You said that this information has a business purpose, management needs to know how well they are servicing their insureds. Why is it you don't keep track of the win-loss ratio when insureds sue the company? Isn't there a same business purpose?

A Because I think that's a separate field. The claims management need to know, you know, what's going on as far as we're protecting our policy holders. If there's an argument between, a disagreement between State Farm and our insureds, or anybody else, that's really not in the scope of what this report does. This report tracks how well we're defending our folks, our [134] people that we're going to. So that's really what it's for.

Q Do you have any report that you're aware of at State Farm that shows the win-loss ratio of claims by insureds against their insurance company, State Farm?

A No, I've never seen a report that talks anything about suits against State Farm.

Q Then let me ask the question again. If there's a business need to track how well State Farm is servicing their insureds in the third-party claims, why isn't there a similar need to do the same thing to find out how well they're servicing their own insureds on first-party claims?

A Well, I think that one thing that talks a lot about how well we are servicing your insureds. You're talking about a lot bigger number, you know, when you deal with statistics and customer satisfaction. You want to look at numbers that are big enough to deal with. And you know, facts on these are a lot more straightforward than anything against State Farm.

Q Isn't it true that State Farm, if it chose, could keep track of the same numbers on every lawsuit that was filed against it by its own insureds?

A If they wanted to develop a report to show and track cases against State Farm --

[135] Q They could do it, couldn't they?

A Yeah, you could build a database to track anything.

Q Isn't it true the reason they don't is because those ratios would show that they are not treating their insureds fairly?

A I personally would disagree with that. I think that nobody's needed it for business management purpose, or we would have it.

Q Okay. You mentioned in this report that there's a business need to know how much has been paid out in third-party claims.

A I think when the claim folks look at it, when I look at it, I look at, you know, the percent that are settled out of those that went to trial, the number we won. The total dollar figure, the dollar paid out. I mean, when I look at those numbers, that truly doesn't mean a lot to me. What does mean a lot is what are settled, how many dismissed, how many go to trial, how many we win, and how many we lose.

Q Wouldn't it also serve a business purpose, Mr. Eschelman, if it serves a purpose in a third-party context, wouldn't it also serve a business purpose to find out how much State Farm had paid out pursuant to lawsuits against itself by its own insureds?

[136] A If somebody wanted that information for business management purposes, you know, we could track that. They've chosen not to.

Q That's right. They've chosen not to. Let's cover a few more things. And let's understand what this relates to. This claim, the Campbell claim versus State Farm, that would not be in any of your reports as a win-loss, or any track.

A Correct, Campbell versus State Farm would not be in there. The original case where the Campbells were sued would be in there.

Q And all of the class actions where millions of people are suing State Farm, none of that would make it into this report, would it?

A Yeah, that report is designed just to track cases against our insured.

Q Now, you mentioned that there was, there used to be a requirement to keep on this BI lawsuit report in another column, which we don't find in any of those papers. I want to refer to the specific general claims memo in December of 1988, where it says, "An additional column -- "

Well, let me back up. You understand that this memo, 238, pertains to the BI lawsuit reports, right?

[137] A Right, that's the memo telling the folks essentially how to enter the raw data into the system.

Q And here it is indicating, is it not, that there's going to be another column entitled "months in litigation." That is, "How long has the claim been outstanding in a lawsuit before it's paid?" Right?

A Right, it looks like that's the time they decided to add that column to the input.

Q And then, referring to the same general claims memo number, but now a different date, we have the instruction under item number 2 that "months in litigation" column has been eliminated. Now, that's what you were referring to earlier?

A Yeah, when I read that one it looks like they decided not to use that.

Q And they also were going to eliminate the alternative dispute resolution won-lost status.

A Correct.

Q In looking at that exhibit, since we have a period of at least five years--no, more than that, seven years --

A About seven years, yeah.

Q -- how come we don't have any of those columns in those reports that you generated for this case? We don't have any of those columns that refer to [138] months in litigation. How come?

A Because on a company-wide basis I think the number would be pretty meaningless. I mean months in litigation -- And what does it tell you, that it's five years in litigation in Chicago, eight years in litigation in Los Angeles, and two years in Utah? I mean that information is vital to the people in the individual claim office, but to somebody like me, looking at company-wide numbers, and I'm looking at that, to me I just don't see the value in it.

Q You may not see the value in it, but what I would like to know is why, in these reports from '88 to '95, when you generated them for this case, why didn't you include them in the column? In this exhibit, that's what I'm asking.

A If you look at the memo, it basically tells them how to input, or what data to input into the system, raw data. Then the people at corporate headquarters who generate this report, they can choose to put that in there if it's valuable, because, as you can see, that report's pretty crowded as it is.

And you know, you have to choose what's of value to get on there when you talk company-wide numbers, and what's not.

Q Are you saying if State Farm would have chosen to do so here in this case, they could have added [139] that column in their printout?

A If they would have felt it was meaningful to add that on a company-wide report, it looks like in 1988 they started inputting those numbers. But to me, when they got rid of them, they're basically saying the same thing I was, that it didn't make sense.

Q One of the issues in this case is how promptly State Farm pays fair value in their claims, and how long they string out claims through litigation. That is a very important factor to us in this case. So I'm asking you, as the company representative who verified these reports, why don't we have that information?

A Because to me, in management planning, I can't make a decision on when the cases go to court, what offers are made. To the individual in the claim office, what's going on there, that's vital to them. But to me, from a statistic generator, from anybody looking at a big picture, those numbers don't have any meaning.

Q Let me ask you, Mr. Eschelman, if we were to ask you to go back and tell us how, in Mountain States, how many years each of these cases, or the average, were involved in litigation, could you print that out for us?

A No, that information, months in litigation, [140] isn't a statistic available to me at a statistics level.

Q So it was a year ago, but it's not today?

A I don't understand.

Q Well, doesn't it say that as of March of 1995 it was available, and they indicated they didn't want it in the report any more?

A You said available to me. Now, if I wanted to call all the claim offices, ask them about it, and do the research, I

could get that number for you. But as far as, like the claim numbers that I was able to give you off the MP and I system, that is one of the fields not tracked.

Q So that has now been taken out of the system as of '95?

A You know, I have not seen their screen, but it looks like they stopped tracking it March 1st, 1995.

Q So you could no longer provide that for us if we were to request you to do it today.

A Without going back and looking what their computer screen is, looking at the format of the old records, I can't say that I can, and I can't say that I cannot.

* * *

[144] * * *

Q Are you aware of the fact that from time to time the states increase their minimum statutory limits for coverages?

A Right, I'm aware of that fact.

Q All right. For example, in Utah, if I did my legal research right, for liability, BI, from '83 through, '73 through '80, the minimum single limit was $15,000. Now, so that we understand what that means, [145] Mr. Eschelman, that means that everyone has to have at least $15,000 of liability insurance, right?

A Right, those that choose to buy insurance.

Q And the combined was $30,000. And then from '81 through '92, that went up to $20,000/$40,000. And from '92 to the present, well, at least in '95, let's put it that way, it went up $25,000 for a single limit, and fifty for a combined limit. And underinsured motorist coverage did the same.

Now, if we had a case, a serious accident where, let's just say there was $100,000 in damages-- just having you assume this--and it's covered under this BI liability coverage, assuming the party was willing to settle, in 1980 they would only receive $15,000, they would settle and it would be over. Do you understand that? Are you with me?

A Right, if the insured had that coverage.

Q Yes. And I'm just saying assuming these were damages. But State Farm would pay $15,000. Now, in 1981, given the same hypothetical, now State Farm would pay $20,000, right?

A That's what the minimum increased to.

Q And in 1992, State Farm would then pay $25,000. Do you see that?

A Yeah, just with all the assumptions.

[146] Q Now, isn't it true that part of the reason why this is going up is because the statutory limits are going up?

A That may factor in there somewhere, but I think if you look at the chart, you know, it's not making any peaks that would correspond to that.

Q Do you know the reason why? This is a nationwide figure, isn't it?

A Right.

Q And so each state is adjusting their minimum limits at different years, aren't they?

A Right.

Q And that could very well account for why that's going up, couldn't it?

MR. SCHULTZ: Objection, Your Honor, that's totally an incomplete hypothetical. It doesn't take into account all the different types of claims and values of claims. It's just, it assumes facts that are inaccurate.

THE COURT: Overruled.

MR. HUMPHERYS: Thank you.

Q (BY MR. HUMPHERYS) That is one of the reasons why the average paid claims are going up, is because the minimum statutory limits required by law are going up, aren't they?

[147] A Without having the background of an actuary to know what percent it is, I would say it is probably just,

the cost of medical coverage is probably a lot bigger factor, that that may have a minimal factor because very few claims are at policy limits. So --

Q But you are admitting that that would have some effect?

A I think it would probably have a slight effect, but I really don't think it's a major factor.

Q Okay. You're aware that medical PIP has gone up too, aren't you?

A Right.

Q It used to be $500, and then it went up to $2,000, and then $3,000.

A Right.

Q It doesn't take much, any more, of an accident to get $3,000 in medical expenses, does it?

A No, it doesn't.

Q And yet that would represent nearly, what, 600 percent increase from $500 to $3,000.

A But just as you said, it wouldn't take much, so I would assume that basically limits had, when you talk--and low coverage like that--limit changes probably had nothing to do with changes there.

Q You mean the average paid? It would have [148] nothing to do with average paid?

A When you're talking about small limits like that, I really feel you're talking about, because most of them are going to be above limits to begin with.

Q I'm talking about the average paid of PIP.

A Right.

Q It would have a major impact, wouldn't it?

A No, when you look at PIP --

Q Let's just look at PIP.

A When you're saying it jumped --

Q If it went from $500, that's the limit, to $2,000 or so -- I may be off a little bit -- but it went up.

A Okay.

Q Assuming that this went up, and then the minimum limit went up to $3,000, isn't that nearly a 600 percent increase over that period of time?

A Okay, I see your point now. I thought you were talking about the limits having an effect on the amount of the injury. And I said, well, most are going to be above $500 to begin with.

Q I'm not talking about injuries. I'm talking about average paid.

A The average paid would go up with PIP when you're talking about those small of numbers.

Q Merely because the statute raises the limit.

[149] A Right. When you're dealing with --

Q Okay.

A That's significantly different, but I could see that.

Q And these charts would not demonstrate, would they, if State Farm, back in 1980, is already underpaying claims, this would not be able to demonstrate that it continued to underpay claims when you factor in inflation and statutory limit increases, would it?

MR. SCHULTZ: Object, no foundation.

THE COURT: Overruled.

THE WITNESS: Once again, we talked about whether -- What it represents as far as subject matter, I don't know. It represents objective data on dollars paid out per claim.

Q (BY MR. HUMPHERYS) Now, on these expenses -- let me see if I can get to the BI -- as State Farm fights more and more in court, they have to hire more and more lawyers. You would agree with that, don't you?

A That would seem to correspond.

Q And they would hire more and more experts. You'd appreciate that, wouldn't you?

A What goes on in the legal realm is outside, but if you say so.

[150] Q I can promise you that they go up. And they're expensive. We've heard some evidence that in the latter eighties and early nineties they began to start taking aggressive defense postures. Isn't that consistent with the graph where, in about the 1987, '88 period you began to see a substantial increase in the adjustment expenses of BI claims?

A You know, I can't testify to the number of lawyers. I know that was a period of tremendous growth, when we were adding a lot of claim reps to the company to handle, so they'd handle fewer claims. And most of the expense is going to be salary, as opposed to trial expense or witness expense.

Q Do you track how much you pay your lawyers?

A Yes, we do. We track, we have a different report that is called an attorney fee report, so we track how much money is paid to lawyers.

Q That's a substantial sum, isn't it?

A I can't remember the last report I saw, and when you look at number of trials, define "substantial sum."

Q Well, hundreds of millions of dollars?

A I've never seen a report that showed that much. And I need to let you know, the report I see is a regional report.

[151] Q Okay, so you don't have information on that.

A Right.

Q Do you know how much counsel in this case has charged?

A I have not a clue.

* * * *

EXCERPTS OF TRIAL TESTIMONY
OF GARY T. FYE, JUNE 7 & 11 & 20 & 21, 1996

[Vol. 4, R. 10259, commencing at p. 5]

GARY T. FYE called as a witness by and on behalf of the Plaintiffs, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:

* * *

Q To all. Would you state your full name, please.
A Yes, it's Gary Tipton Fye.

* * *

Q What type of work are you engaged in?
A I investigate and analyze insurance disputes, I'm a licensed independent insurance adjuster.
Q Have you worked for various forms of companies in the course of your lifetime?
A I have. I, since 1962 I've represented, or worked in cases involving somewhere between probably 100 and 200 insurance companies.

* * *

[16] * * *

Q You're here as an expert; isn't that right?
A Yes.

* * *

[18] * * *

Q Do you -- Did you testify in the first trial, in October and November, of this case?
A Yes, I did.
Q I should say of 1995. And were the findings of that jury consistent with your opinions?
A Yes.

Q Now, you're back again with an expanded role, but I'm going to have you also try and go through the same information that you went through in October for [19] the jury, and we'll examine the facts of the underlying case so the jury fully understands what occurred. And then, Mr. Fye, we will have you come back in a week and discuss now the nationwide issues in this case. Though there may be a little overlap, that will be the general context of your involvement, here.
A Okay.
MR. HUMPHERYS: Now, Your Honor, I think we would offer Mr. Fye as an expert that has been duly qualified, and would like to elicit expert opinions from this point forward.
THE COURT: No objection.
MR. HUMPHERYS: All right, thank you.
Q (BY MR. HUMPHERYS) Now, Mr. Fye, do you charge for your services as an expert?
A Yes, I do.
Q Is that unusual?
A No.
Q How much do you charge?
A I charge $125 an hour for my work, and double time for testimonial time, the time I spend testifying.

* * *

[22] * * *

Q (BY MR. HUMPHERYS) Mr. Fye, over the course of the years, as you have been involved as an expert in either adjusting claims for State Farm, way back when, and since you have now started giving testimony against them, have you had the occasion to study, learn, read sworn testimony, read their responses to the litigation requests for information, and other information, from which you can draw the conclusion whether or not State Farm destroys old documents?
A I have.

Q And just describe generally, what have you experienced in this regard?

A State Farm has a consistent pattern of destroying documents, or changing claim files, that starts in the seventies, and continues --

MR. BELNAP: Your Honor, may I have a continuing objection, both on foundation and relevancy?

THE COURT: You may.

Q (BY MR. HUMPHERYS) Go ahead.

A And continues today. I've many times had the experience of being involved in a case in a state, and my clients will ask for the production of documents, they'll be produced by State Farm subject to protective [23] orders or confidentiality agreements. At the end of the litigation of the case, I'll have to give them back.

Then in the next case we'll ask for the same documents, and they will be destroyed. So basically documents that aren't subject to protective orders, or even documents in that category that don't have to be returned, I've basically established an archives, or a library of those documents.

Q Approximately how many documents are we talking about that you have retrieved and archived over the years?

A Several hundred thousand pages. I don't know the exact number, but there's a considerable volume.

Q And as part of the services that you render as an expert, do you provide copies of these documents which are otherwise unavailable through State Farm?

A Well, I protect these documents from disclosure, from irresponsible disclosure, actually. I don't just give them to everybody. But I do make them available, I loan them to attorneys who need to make copies of them, and I certainly don't withhold them when I'm involved in a case. They're crucial to show the character of a claims management system that has engineered one of the most unusual --

MR. BELNAP: Your Honor, this is beyond the [24] scope of the question, and it's a narrative, and it's without foundation.

MR. HUMPHERYS: Your Honor, this is about foundation, and he's testifying about his experience that he's had, so that he can now address issues in the present case.

THE COURT: Overruled.

THE WITNESS: Organizations run on documents, and the documents are the evidence of the corporate memory, the corporate history, and they're really crucial to my job in analyzing claims handling behaviors. It's one thing to look at a claim file, but to someone who's been involved inside the business, to look at the surface is not enough. I like to examine the systems that bring about what you see on the surface.

And so when I saw the PP&R program for the first time, where there were goals to reduce average paid claims, and there were statements like, "We're taking a hard stand on indemnity payments," meaning claim payments, "and our legal fees are rising, but that's okay because we're taking this hard stand," well, I had never seen anything like that in the claims business.

And so when I started looking at this issue [25] of document destruction, I found documents that basically started in 1972, I found a speech in 1979 where the company attorney was talking about, "Don't let these documents exist from the beginning." I found the destruction of the uninsured motorist coverage in 1983, or 1982, pardon me.

In 1983 there was a project at State Farm to figure out a way to decide which documents to retain and destroy because of class action litigation against the company. In 1985 there were memos about destroying documents because they were coming back to haunt the company in litigation over the way they handled cases.

In 1990, there was a meeting in Utah, here, where they were told to destroy documents so they wouldn't be available for litigation like this. And in 1995 there was a letter from the new

records administrator that went out to all the company attorneys telling them to destroy all the old manuals and training materials.

So I kept collections of that material that was being destroyed.

* * *

[26] * * *

Q (BY MR. HUMPHERYS) Let me show you what has been marked as Plaintiff's Exhibit Number 21. Will you tell us what that is.

A This is the Excess Liability Handbook, that includes some of those documents that I mentioned from 1970 and '72.

Q When did you first see that document? Not the specific one in your hand, but I mean the Excess Liability Handbook.

A You know, I don't recall what year it was.

Q Approximately when?

A I think it was in the early nineties.

Q Have you produced that document in response to State Farm's requests in other cases?

A I have, many times.

Q How many times, approximately?

A Thirty or so.

Q And these are different State Farm cases that State Farm asked you to produce this document?

A Yes.

Q And in those cases, what has been your experience on whether or not State Farm acknowledged [27] that that was a true and accurate manual of State Farm?

MR. BELNAP: Your Honor, may I have a clarification, here, for purposes of this question? Is the question to Mr. Fye, State Farm the defendant in this case, or State Farm Fire and Casualty?

Q (BY MR. HUMPHERYS) I will ask you, either. Either one or both.

A What was the question, again?

Q The question was, in these cases where you are producing them, what has been your experience on whether State Farm acknowledged the validity of that manual?

MR. BELNAP: Could I have it broken down, please, in the answer, so we could monitor this?

THE WITNESS: I didn't hear you, Mr. Belnap.

MR. BELNAP: Excuse me, Mr. Fye. Your Honor, may I have that broken down in the answer, so that we could monitor this?

THE COURT: Yes.

Q (BY MR. HUMPHERYS) All right. First of all, did some of these thirty or so cases you've talked about involve both the State Farm Fire Company and State Farm Auto Company?

A Well, generally the cases involved both companies, because the auto company wholly owns --

[28] MR. BELNAP: Your Honor, excuse me, that's not responsive to the question.

MR. HUMPHERYS: Well, it is.

MR. BELNAP: I'd move to strike. The question is --

THE COURT: Finish your statement.

MR. BELNAP: The question is, has this been requested by State Farm? And I simply asked if it's the auto company or the fire company.

THE COURT: Your objection is overruled. You can proceed to get the answer from him, but I want him to answer it.

Q (BY MR. HUMPHERYS) All right. You said that many of these companies involve both. You were explaining why.

A Well, the auto company wholly owns and controls, and completely directs the activities of the fire company, so --

MR. BELNAP: Same objection, Your Honor, move to strike --

THE COURT: Overruled.

MR. BELNAP: -- as a legal conclusion.

THE COURT: Overruled.

Q (BY MR. HUMPHERYS) Go ahead. Have you lost your train of thought again?

[29] A I think I can get back --

Q Okay.

A -- on the rail, here. So many of the cases I've been involved with don't make any distinction between the companies. But a portion of the cases have been the fire company, and a larger portion have been the auto company. But in the cases, it doesn't matter what company is involved, State Farm has denied the existence and authenticity of this document.

Q And in this case do you have an understanding of, before the trial of 1995, in October-November, do you understand what State Farm's position was regarding this manual?

A State Farm has produced a copy of it in a couple of cases, but has denied that it was ever in use, as far as I can tell, and they have basically refused to authenticate it, meaning verify that it's an accurate State Farm document.

Q Was there a judge in California that required State Farm to divulge literally scores, if not hundreds of boxes of internal documents?

A Yes --

MR. BELNAP: Objection, irrelevancy and foundation, Your Honor.

MR. HUMPHERYS: It goes to the issue of the [30] Excess Liability Handbook.

THE COURT: Overruled.

THE WITNESS: There was a case in Los Angeles called Singh, S-I-N-G-H, versus State Farm, and in that case Judge Drake required State Farm to produce manuals and PP&R forms.

And PP&R forms, the performance, planning and review program, is a system of annually --

MR. BELNAP: It's beyond the scope of the question, Your Honor.

MR. HUMPHERYS: We'll get into the PP&Rs in a moment, Mr. Fye.

THE WITNESS: Sorry.

Q (BY MR. HUMPHERYS) Was this eventually produced pursuant to the court's order in the L.A. case of Singh versus State Farm?

A I believe it was, yes.

Q And since that time, has State Farm, in your experience in other cases, continued to deny the existence of that manual?

A And the use of it, yes.

MR. HUMPHERYS: We would offer Exhibit 21 into evidence.

MR. BELNAP: Your Honor, I would object in terms of foundation at this point as to this witness' [31] ability to lay the foundation that this document was ever used involving this case, based on the foundation that's been laid to this point in time, by any of the Utah adjusters, or any of the people involved in the decision-making process.

Whether it is a copy of a State Farm document is different than allowing it into evidence for purposes of this case, and that would be our objection, Your Honor, at this point, with this witness.

MR. HUMPHERYS: Your Honor, I think State Farm waived it when, in their opening statement, they referred to it and gave evidence about it. I can't believe he's objecting to it now.

THE COURT: Overruled. It's in evidence.

(WHEREUPON Exhibit Number 21 was received into evidence.)

Q (BY MR. HUMPHERYS) We'll refer to this Excess Liability Handbook in a moment. In light of the objection that was raised by Mr. Belnap, I would like to just review with you briefly some of the use, based on your knowledge, regarding the Excess Liability Handbook.

First of all, Mr. Fye, was it your understanding that defendant State Farm Auto, the defendant in this case, produced Exhibit 21 on the morning of, or shortly before the first trial in [32] October?

A Yes.

Q Was it your understanding that State Farm has claimed that that manual did not exist, or had been destroyed previously?

A Yes.

Q You've already discussed how other older manuals and handbooks have been destroyed. To your knowledge, have -- Well, let me back up, so that the jury understands. Explain, if you will, in the organization of State Farm, how the fire company and the auto company connect. First of all, does the fire company issue auto policies?

A Yes, it does.

Q And are those a different policy than issued by the State Farm Auto Company?

A Essentially not.

Q Is one a rated, or preferred, and one a standard? If you don't have as good a driving record, then it's the fire company that issues the policy?

A It depends on the particular state where they write the insurance, but they gain slightly different markets, I think.

Q But State Farm Auto is usually the preferred, or the best record insureds?

[33] A That's right.

Q Now, we talked about yesterday, we put up on the board the organization of State Farm. I think the jury has a copy, so I won't put that back up on the screen. But would you explain now to the jury, over the past twenty years or so, where the connection between the auto claims department and the fire claims department connect at various points, from the lowest level to the top.

A The fire company has, is like a division of the auto company, and it, down at the lowest level, down where the rubber meets the road, that is, during the claims transaction, there are fire adjusters and auto adjusters, and there's a division. There is supervision of both those companies by the time you get to the regional level.

In other words, under the regional office, there's a connection where all of the adjusters, whether they're fire or auto, report basically to the regional authority.

Then as you go back up into the general claims office, which is another way of saying the home office claims office, there's another division. There's a separate set of consultants and lawyers for the fire company, and a separate set for the auto company. And [34] then again they're under mutual direction when they get to the claims vice president level.

Q So at the claims vice president level, is he over both fire and auto and all of their claims practices?

A Yes. Yes.

Q And at the region vice president level, is he over all of the fire and auto claims handling?

A Well, not the regional vice president himself. The regional vice president has a deputy in charge of operations, and he's basically in charge of the claims operation.

Q From time to time over the past twenty to thirty years, has the divisional superintendent had responsibility for both fire and auto?

A Yes, there are combined units, I should have mentioned that, but there are times when the claims volume and the geography of a certain area will dictate that the same claims people handle both sides of the fence, so that can occur also.

Q All right. And then down at the lowest level of adjusters, are there times when the adjusters work for both companies?

A Yes. That's not the usual, but that does happen from time to time.

[35] Q Now, the, as it pertains to the handbook, the Excess Liability Handbook, does it state in its purpose, preface, that it is to educate, train, and assist the divisional claims superintendents regarding the handling of the excess claims?

A I've got a copy here, let me look in it.

Q I'll give you 21 so we don't have any confusion. You can use your own copy, but if you want to refer to Exhibit 21, you're welcome to.

A I'll use the exhibit. Where were you reading, now?

Q In the preface, I believe, where it talks about the purpose. I'm sorry, part 3, page 1. Forgive me.

MR. BELNAP: Is yours Bates numbered that he's referring to?

MR. HUMPHERYS: It is, and he'll give you the Bates number.

THE WITNESS: It's page number 2018. Defendant-2018. It reads --

MR. BELNAP: Is that the page that, up at the top says "State Farm Fire and Casualty operation guide"?

THE WITNESS: Yes.

MR. BELNAP: Thank you, Mr. Fye.

THE WITNESS: You're welcome.

[36] Q (BY MR. HUMPHERYS) Go ahead and read its purpose.

A To provide education, training, and assistance to divisional claims superintendents, fire and casualty claims superintendents, casualty and claims examiners, with regard to the handling of excess liability claims.

Q All right, now, did the fire company always have a separate claims department?

A No, not --

Q Did that change in 1970?

A Around that time, yes, they developed a separate operation.

Q And who became the vice president over the fire department?

A A gentleman named Richard Aaberg, who's listed on page 2001.

Q Was he previously a vice president, or assistant vice president of claims in the auto company?

A That's my understanding.

Q And he is the one whose name appears on the cover page of the Excess Liability Handbook?

A Right.

Q Are there references in this handbook to the handling of auto claims and auto claims handling?

[37] A There are.

Q I can say it two different ways.

A Yes, there are.

Q Is there an article by general counsel, or senior claim counsel for the auto company?

A Yes. There's an article starting on page 2028 by Ross Hume, senior claim counsel for State Farm Mutual Automobile Insurance Company.

Q And in part 5 of the Excess Liability Handbook, is it your understanding that that was a previous, or that that was, that part 5 is a version of an earlier auto Article 14 of the auto manual?

MR. BELNAP: Objection, leading.

THE COURT: Sustained.

Q (BY MR. HUMPHERYS) Okay. Tell us what your understanding is regarding part 5, as it pertains to any auto manual.

MR. BELNAP: Objection, lack of foundation.

THE COURT: Overruled.

THE WITNESS: State Farm Auto had what was called the claims superintendent's manual, and Article 14 basically has the same material that part 5 has in it.

Q (BY MR. HUMPHERYS) Are there references in it to actual auto documents?

[38] A Yes.

Q And just briefly describe a couple of them.

A Well, one of the pages of this section describes auto reports, ACR, which is the automobile claim report, and CLR. To someone outside the company those would be mysterious, but what that is, is the combined liability report, which is the report, the narrative report that auto adjusters dictate for their automobile claims.

MR. BELNAP: Where are you referring to, Mr. Fye?

THE WITNESS: Hang on one second. Page 2047.

MR. BELNAP: Up at the top, if you could help me, please, in part 5.

THE WITNESS: Part 5, page 9-B, subparagraph 1. Where it says "ACR statements, police reports, et cetera, CLR, status reports, et cetera."

Q (BY MR. HUMPHERYS) And those are documents that are used in the auto claims department?

A Yes.

Q What about sworn testimony by the vice president of claims, Robert Macherle? Has he stated that this was a version of Article 14 from the auto manual?

A Yes.

[39] Q In what case?

A A case called Schlossberg in Maryland.

Q Now, we've heard the representation by Mr. Belnap yesterday in his opening statement that this Excess Liability Handbook was not used by the auto company, but was fire company only. Is that true, based upon your experience?

MR. BELNAP: Objection, foundation.

THE COURT: Overruled.

THE WITNESS: No, I've reviewed the testimony of all the people involved in this, Mr. Aaberg, Mr. Hume, and basically

Mr. Hume and Mr. Macherle, Mr. Macherle, who was the claims vice president at that time, have testified that this is basically the company's practices.

Q (BY MR. HUMPHERYS) Based on your experience with the cases you've been involved in, the documents, the testimony that you've read, do the principles that are set forth in the Excess Liability Handbook continue to be operative today?

A Yes.

MR. BELNAP: Your Honor --

THE WITNESS: Excuse me.

MR. BELNAP: Can I move to strike that answer, as I was raising for an objection, and state my [40] objection first?

THE COURT: All right.

MR. BELNAP: I object for lack of foundation, and I would ask to be able to voir dire in aid of that objection, if the court would permit it, please?

THE COURT: All right, you may voir dire.

MR. BELNAP: Mr. Fye, have you reviewed the testimony of the people that handled the Campbell claim here in Utah, and other claims adjusters and claims management level people here in Utah?

THE WITNESS: Yes.

MR. BELNAP: With the exception of Mr. Summers -- I want to put him off to the side for a moment, sir, do you understand that?

THE WITNESS: And you're excluding Mr. Crowe too?

MR. BELNAP: With the exception of Mr. Summers -- Let's go ahead and exclude Mr. Crowe, too.

THE WITNESS: Okay.

MR. BELNAP: Because Mr. Crowe did not come to Utah until '86 or seven; isn't that true, Mr. Fye?

THE WITNESS: That sounds right.

MR. BELNAP: Okay. Is it not true, Mr. Fye, that without exception, each of the people in claims [41] management or adjusting have stated that they had never seen this document?

THE WITNESS: Yes.

MR. BELNAP: Isn't it also true that each of the people indicated they had never used this document in the adjusting of this claim?

THE WITNESS: Yes.

MR. BELNAP: Now, with respect to Mr. Summers, he likewise indicated he had never seen this document; isn't that true?

THE WITNESS: I don't recall that.

MR. BELNAP: Okay. I will represent to you that's what he testified.

THE WITNESS: Okay.

MR. BELNAP: All right, sir?

THE WITNESS: Sure.

MR. BELNAP: And after having reviewed it, he indicated that he was familiar, having read it, with some of the concepts.

THE WITNESS: (No audible answer.)

MR. BELNAP: Given that testimony, Your Honor, we would move, or object, for lack of foundation, as to that question that is pending to this witness at this point.

MR. HUMPHERYS: Your Honor, my question [42] didn't go to whether or not someone had seen the manual. The question was whether or not, in his experience, the principles set forth in the manual continue on to be viable today.

THE COURT: I'm going to overrule the objection. That's cross examination, counsel.

Q (BY MR. HUMPHERYS) Just to follow up a little bit from what Mr. Belnap raised. Did Mr. Crowe have a copy of this manual in his possession while he was working for State Farm?

A Yes.

Q And was he a divisional claims superintendent?

A Yes.

Q And at the time he was, was he doing both auto and fire?

A Some of that time, yes.

Q He was doing it at the same time, working on auto and fire together?

A I believe so, yes. Not all the time he was with them, but part of the time.

Q Did Mr. Summers indicate that, after he reviewed the manual, that the principles set forth were the very kinds of things that he was instructed to do in these kinds of claims?

[43] A Yes, I think that clarification was made, that using the manual physically is a different distinction than using the principles articulated in the manual.

Q Are you aware, in any of your reading of deposition testimony -- By the way, let's explain to the jury what a deposition is, and how it takes place in the various cases, and what purpose it serves, so they can understand what we mean when we talk about that.

A The deposition is sworn testimony that's taken usually outside of a court, where lawyers examine a witness under oath for purposes of developing facts about a case, or preserving testimony that can be used later in trial. And it's the type of information that people who are asked to give expert analysis of claims handling procedures rely on in forming their conclusions about how an insurance company operates, or how a claim is handled.

Q Is it your understanding that State Farm now claims that a memo went out in 1979 which said that this particular Excess Liability Handbook was obsolete?

A Yes.

Q And that there was another memo, State Farm claims, that went out in 1986, that says it was obsolete?

[44] A Right, I remember it was about ten years later.

Q All right, now, in the course of the many cases that you've been involved in, do you read the testimony of the State Farm employees, the executives, the officers, all of that, in all of these cases that you're involved in?

A Yes, I do.

Q And do you look at and review the memoranda, the internal communications, and other forms of written documents that may relate to the claim practices at State Farm?

A I do.

Q Have you ever seen or heard or read any instruction from State Farm management that the principles set forth in this manual should not be carried out by claims personnel?

A No.

Q Assuming that this manual was obsoleted as suggested by counsel, have the practices changed?

A No.

Q Now we're going to get into the handling of the Campbell claim, and then we're going to come back to the Excess Liability Handbook. But generally speaking, did you find, in the review of the Campbell claim, that [45] the principles set forth in the Excess Liability Handbook were carried out?

MR. BELNAP: Your Honor, I'm just going to ask for a continuing objection on foundation and legal conclusions.

THE COURT: You may.

Q (BY MR. HUMPHERYS) Go ahead.

A The Campbell case, in a way, is a textbook of how this manual can be applied in the area of self-serving statements, making the file appear to be something it isn't, and so it was clearly, the claims activities were clearly based on the principles that were articulated in this handbook.

Q Now, what I'd like to do, Mr. Fye, given your knowledge and experience of insurance work, in order to understand what happened in this file, and what happened to the Campbells, I think it would be appropriate for you to give us a little instruction on how insurance works.

MR. HUMPHERYS: And Ben, would it be possible, could we get that drawing board up here? This is an awkward setup, Your Honor, and I don't have any problem if counsel wishes to move, if the court desires.

THE COURT: Counsel may position themselves so they can --

[46] MR. BELNAP: Can I offer you this other pad that's not so obtrusive? I didn't even think of that.

MR. HUMPHERYS: Sure, you bet. All right, may the witness come down for illustration purposes?

THE COURT: Certainly.

MR. HUMPHERYS: Thank you.

Q (BY MR. HUMPHERYS) Mr. Fye, what I'd like you to do for a moment is to give us a basic lesson on what happens when a claim, or when an accident occurs which is covered by insurance, and what happens in the general claims processing, and what information we need to know, to comprehend what's going on behind the scenes.

A Let me start by explaining that insurance is a risk transfer device. You pay a premium, and a company that's in that business accepts the risk of something bad that happens.

And to give a technical explanation of insurance, it sounds pretty hard to fathom, but it's a combination of homogenous, which are the same type of exposure units, that by application of large numbers, individual losses become collectively predictable.

And I don't mean to sound like double talk, there, but what that means is that when people pay their premium into a pool of funds, the insurance company can [47] use actuarial science, and they can predict that a certain number of losses are going to occur.

And this pool of funds is divided up, there are various portions for various reasons. There's a premium tax, there's a sales commission, which is called acquisition cost, there's overhead, which is the cost of maintaining a claims staff and buildings and

so forth, and there's a portion called profit. In other words, insurance companies strive to gain underwriting profit from the sale of insurance.

But by far the largest amount of money in this pool is the portion that is set aside to pay claims.

When an insured buys protection, they have kind of a vested right, or ownership of those funds. These funds don't belong to the insurance company, they don't at first belong to the person with, the third party over here who's had the accident with the insured, but there has to be an accounting function done, an investigation, and kind of an account-ing function done about, where should the funds be diverted to do the job that the insurance company said it was going to do? And basically that job is to provide peace of mind --

Q To whom?

A To the policy holder.

[48] Q Let's try and relate these boxes to people. In this case --

A This would be Mr. Campbell.

Q This would be Campbell. And who would be the third parties?

A The Campbells. The third party would be --

Q Mr. Slusher?

A Slushers and the Ospitals.

Q Okay.

A And the idea behind insurance is that you buy peace of mind and security and good service, and various companies have different promises. State Farm's, for instance, is, "Like a good neighbor, State Farm is there." That means, to the public, that the public can have peace of mind and security because they are going, they have the expectation that they'll get good service and protection from claims such as this one.

The adjuster's function is special, in that the adjuster has two relationships, here, really. Both to the insured and to the

third parties. But basically to the Campbells, there's a very special relationship called a fiduciary relationship. The Campbells place all their trust and confidence in the adjuster and insurance company to faithfully investigate, evaluate, and discharge any claims that are against them.

[49] And insurance companies who fulfill that function basically have complete control, and because of the complete control they have over the transaction, the standards that adjusters have to meet are very stringent.

Q Let me stop you there for a moment. You said that the adjuster has complete control. How does he get control over what happens to the insured, or Mr. Campbell?

A Well, the policy provides both the right and duty of the insurance company to investigate the accident, and to make appropriate settlements. It doesn't leave those responsibilities to the insured, it leaves those responsibilities to the adjuster, or to the insurance company.

Q When I buy insurance, am I giving up the right to defend myself in the action when a third party may sue me?

A That's right. If you go over, if the adjuster won't do this, and you go over and try to do it yourself, you'll void the policy, you'll nullify your insurance entirely if you fail to cooperate with what the insurance company wants to do.

Q And is there a section in State Farm's manual that says that State Farm has the exclusive right to [50] control the negotiation and settlement of those claims?

A That's right.

Q And so Mr. Campbell had no right to control what was happening to him if he wanted his insurance to be effective?

A That's right. It mattered little, actually, whether he said, "Settle this case," or, "Don't settle this case." Because the real control is left with the company.

Q All right. But they consider Mr. Campbell, his wishes and what he wants to do?

A Certainly.

Q It would be improper not to consider it, wouldn't it?

A Certainly.

MR. BELNAP: Your Honor, object to the line of leading questions.

MR. HUMPHERYS: Your Honor, this is obvious, and these are elementary, and I'm trying to move quickly.

THE COURT: If there's an objection, proceed by non-leading questions.

Q (BY MR. HUMPHERYS) All right. Would an adjuster appropriately consider the desires and wishes of the insured in properly carrying out its duty?

[51] Sure. And there's an important part of that, too, and that is that if you're doing a good job as an adjuster, you're letting the insured know all the facts, and everything that's going on, so that when he tells you something, you've explained some of this to him, and you've explained what the facts are, so that he can give you some input.

Q Should an adjuster seek input from the insured?

A Sure. An adjuster's job is to take the insured's statement and find out what he has to say about the events, he or she.

Q Go ahead with your further explanation. Unless you're finished.

A Excuse me, I didn't hear that last part.

Q Unless you're finished. I interrupted you as you were explaining the process.

A Well, the next step I was going to explain is that, while this is a general sense of how the insurance transaction works, and how claims money, profit money, and the costs that are associated with insurance are already built into things at this point, if a point -- Let's call this the point of sale. When you get down to the point of claim, then an adjuster has a more direct hand in developing facts about what happened.

[52] Q All right, would you now explain that to us.

A You've heard the term "liability," or "legal liability." And basically that equates to responsibility. And what an adjuster tries to do, when he or she investigates an accident, is to determine the responsibility of the parties who were involved in the accident.

And when you think of issues like legal liability and fault and so forth, basically what we have is a system, here, where four facts, four things have to be established before somebody can get paid by another party, or by his or her insurance company. And that is, that you have to prove that there was a standard of care, or the standard of how people treat each other.

Q In other words, just because there's an accident doesn't mean someone has to pay for it, correct?

A That's right.

Q Okay, go ahead.

A And that standard of care is usually expressed as, when you're out driving on the highway, you have the duty to be reasonable and to be careful and to be prudent. And it's the degree of care that we would expect, that someone would be reasonable and prudent in trying not to harm us on the highway.

[53] So that would be a standard of care. And so you'd, in an auto accident scenario, you'd, as an adjuster, try to understand what the relationship of the parties might be. And in the case of this accident, there are three strangers, these people didn't know each other, they all had the duty to act reasonably and prudently, and not harm anyone else on the highway.

So the second thing you'd have to prove is there has been a breach of that standard of care.

Q What does a breach mean?

A A breach means to break it, to break the rule, or to not perform up to the level required.

Q If I run a stop sign I'm breaching the standard?

A Well, I was getting to that. If you behave unreasonably or negligently. I'm getting ahead of myself, here. If you're

unreasonable or negligent in performing your duties to the other people, you can be said to have breached your standard of care. That is you broke the rules.

And now there has to be legal cause, or what is called within the industry, and you may hear this term from time to time, proximate. That term means legal cause of damage or injury.

Q If you have those four things, then you have [54] a liability claim?

A That's right. When an adjuster investigates the facts and he's established that they have to be careful with each other, they weren't careful, and the careless act led to the injury, that claim has to be paid.

Q Okay. Now, how does an adjuster, then, go about -- and you can relate it to this case if you want -- what duties does he have, now, in carrying out this responsibility?

A The duties are basically three-fold. Let's just call them an adjuster's job. And I'll just put them up here very quickly. It's to investigate three things. The coverage, the liability, that is the responsibility --

Q That's what we just went through.

A That's right, and the damages. The second duty is to evaluate, and his third duty is to settle, deny, compromise, or in other words, discharge the claim.

Q All right, now, in this process is it your understanding that there are certain good faith duties that an adjuster should carry out in fulfilling these three?

A Well, the overriding duty is that, as the [55] insurance industry has matured and evolved --

MR. BELNAP: Your Honor, I'm going to object in terms of this witness testifying to a legal conclusion, which is the province of this court to instruct on.

MR. HUMPHERYS: This, he has to address the issues of the law and the industry, and he is familiar with what good faith duties are that are imposed throughout the industry.

THE COURT: I'll allow him to give some general explanation, but the jury should understand that this is not meant to be instructions as to the law in this case.

Q (BY MR. HUMPHERYS) Realizing that you're not necessarily relating to the law that would apply to this jury, what is your general understanding regarding good faith duties that an adjuster owes?

A There are a few, but the most overriding fact that an adjuster deals with, adjusters are taught when they learn this business from the ground up, that an adjuster has to, or an insurance company has to pay when liability is reasonably clear.

In other words, you can't go out and do an investigation and have facts that say yes, facts that say yes, facts that say yes, and then stop and make [56] someone go through a lawsuit, or go through whatever steps to get paid. Insurance companies have to pay when liability is reasonably clear. And that's how the system is supposed to operate.

Q Let me ask you a little bit about those three duties. Now, investigating. Is there any duty to be objective?

A There's a duty to be objective.

Q And what does "objective" mean?

A That means don't take sides in your mind. Basically look at the facts, and look at them objectively, or from a distance, as someone not involved in the events of the accident, as fairly and as accurately as possible.

Q Let me just explore that with you. What is an outcome-oriented investigation?

A An outcome-oriented investigation is where you look at an accident, and you see one fact that supports non-payment, and five facts that support payment, and you obliterate, don't write down, don't let the file have those five facts, but you only go by one fact that goes the way you want it to come out.

Q Is that an objective investigation?

A No, it isn't.

Q What about realizing that there is [57] information out there, and not being thorough to find out if there's evidence adverse to --

A Well, in addition to being objective, the investigation has to be thorough and timely.

Q Why timely?

A The whole idea is, insurance is basically a public trust sort of business. The insurance industry has the duty, because they have this valuable franchise from each state to sell this coverage, it's imposed on them the duty to be fair and reasonably quick about it.

Q Can an adjuster properly evaluate and settle the claim if the investigation is not objective or thorough or timely?

A If you aren't objective and you aren't thorough and you aren't timely, if you get to a fair adjustment it's only an accident. In other words, to get to fair adjustments you have to be all these things. You have to go through the steps and be thorough and be accurate.

Q Now, on the second duty, to evaluate, is there room to take positions? Or do you have to do that objectively, again, or fairly? What is the duty in evaluating?

A Well, basically it's to find the elements that -- You know, in the final analysis, if someone is [58] injured by somebody, and they have to file a lawsuit, at the end of that case, after all the evidence of the injury is put on the board, and the attorneys write down the number they think the jury should award, the court gives the jury instructions about what the law is. And the law basically should guide the way insurance companies conduct their business.

For instance, if people are allowed to cover their medical bills, their wage loss, their incidental expenses, pain and suffering, inconvenience, any general damages like that, those all have to be learned about. The adjuster has to learn what that accident means to the individual, and try to think about what would be the

outcome. If that case went through the whole legal process, and the numbers were written on the board, and the facts were analyzed by a jury, what would they award for it?

Q All right. And would an adjuster be fulfilling his duty if he were attempting to evaluate it on some limited, or unfair way?

A If an adjuster -- Yes, in the final analysis, if an adjuster, for instance, had a goal when he started the investigation that he was to pay 10 percent less than the value of that case, or if it wasn't a particular case, if he was supposed to achieve [59] a 10 percent average reduction of claims, that would be grossly unfair to the parties. They wouldn't even know what was going on, and why they were withholding the money.

Q And the third duty to settle, deny, or compromise, is that, is there any timing with that?

A As soon as the liability is reasonably clear, as soon as the facts line up that support the idea that the injured party will be able to recover damages, the insurance company's duty is to step forward and discharge that claim.

Q And to pay its fair value?

A And to pay the fair value.

Q Now, do you have to go to a lawsuit in every claim to find out what fair value is?

A No, if the system works properly lawsuits will be minimized.

Q Is it appropriate to offer less to a claimant that is unwilling to file a lawsuit?

A No, it's not fair to victimize people who simply don't know enough about the system, don't know what their claim might be worth, but because they don't get legal advice and you can take advantage of someone who's -- I'll just say it out front. If someone's gullible, it's not fair to settle a case that's worth [60] substantial dollars for only a few dollars.

Q Now, one final question, and then I think the court may wish to take a break.

A Okay.

Q Is the same process true on first-party claims?

A There are some slight differences, but the general thing is correct.

Q And the first-party claim is what, as compared to the third party that you've been referring to?

A A first-party claim is where the insured has a claim against his own insurance company.

Q Directly.

A Directly. That's your couch has a cigarette burn in it, you have a kitchen fire, you go to your own insurance company, there's no third party involved in a case like that.

Q You're not getting sued, or someone's not making a claim against you as an insured?

A That's right. And that's a slightly different relationship. But the steps of adjusting are basically the same. The only thing is that your legal duty toward others is not in question then. It becomes a matter, "Is there coverage?" You evaluate the damage, [61] pay the claim.

Q You still do it thoroughly, investigate thoroughly?

A That's right.

Q You evaluate fairly?

A Correct.

Q And you pay promptly?

A Right.

MR. HUMPHERYS: All right. Your Honor, this might be an appropriate time for a break.

THE COURT: We'll be in recess for approximately ten minutes. Let's try to be back at least by 10:00 o'clock.

(The jury left the courtroom.)

THE COURT: Let the record show the jury's left the courtroom.

(Brief recess.)

THE COURT: We're back on the record. Let the record show that the jury has returned to the courtroom, and the parties and counsel are present.

MR. HUMPHERYS: Now, Mr. Fye, one further note, as we conclude kind of our "Insurance 101" explanation, or instruction. Could you please explain to the jury, now, how claims, this claims process is affected by an arbitrary goal of reducing average paid, [62] or something such as that, how does that fit into this picture, and how does it affect these duties?

A Well, it distorts everything. But the final product of a goal like that would be to increase the take for the insurance company, and decrease the take for either the insured or the insuring public.

And I can illustrate that by showing this a little bit different way. If you think of this as the premium dollar, and that one dollar that I've drawn basically represents billions of dollars. It's a huge pool of funds. If you divide that up the way that I did on the circle graph, two cents goes to taxes, 14 cents to various costs and overhead and so forth.

I'm using kind of generic figures from a display that this particular company produced in Florida, but these figures will vary from company to company and place to place, depending on what their costs actually are. And there will be a 5-cent profit built in. I think the figures were 39 cents for property damage claims, and 47 cents or so for bodily injury claims.

The reason there's a little more money than a dollar is that insurance companies get to invest that dollar, and so there's about 8 cents more for the premium dollar by the time it gets around to being spent [63] on a claim.

Now, if there's a goal to reduce average paid claims, or, you know, you hear this expression, "Pay every dollar we owe, not a penny more, not a penny less," well that means a lot of different things in these cases than what that, it sounds. There's nothing arguable, it's kind of virtuous the way it sounds, but the way it's applied it's quite different.

And sometimes it means, "Pay what we owe after the insured has gone through years of litigation with us." That is, "We haven't paid that claim back here when liability was reasonably clear, but we've subjected this to every legal remedy we can possibly have, and when we're finally up against the wall then we pay what we owe."

Well, by doing that, the company essentially keeps the premium dollar, and this amount of money grows. And so there is actually a profit in here that represents cheating.

By the same token --

MR. BELNAP: Your Honor, I'm going to strike as non-responsive and as a conclusion, and also improper term under a prior ruling of this court.

MR. HUMPHERYS: Your Honor, cheating is not a legal term, and I was asking him to explain how [64] arbitrary goals of reducing claims affects the expenditures of the premium dollar.

THE COURT: I'll allow it. Overruled.

THE WITNESS: If you have a goal to delete 10 percent here, delete 10 percent here, and actually, the actual goals are not what you're deleting, because like in the medical field, because of new medical technology that's really quite expensive to develop, new drugs that have proprietary rights in them that cost a lot of money, actually medical care costs are increasing some percentage a year, so you have to add that percent to that reduction goal to get the actual amount that the claim is being reduced.

But be that as it may, the effect is to take this profit line and move it this direction. And when you have these goals, it creates a corporate culture that is predatory, that is it takes advantage of situations and people. And when adjusters make the hundreds of decisions that they make during the claims process, they just steadily erode the claim, and they create a windfall right there, in other words they increase the company's profit, and of course that's cheating.

* * *

[65] * * *

Q Would you take the seat, please. All right, Mr. Fye, in the course of this case did you have the occasion to review all of the documents in the underlying case, including the claim file, the attorneys' files, the experts' files that testified in the Logan case, and all other documents pertaining to that?

A Trial transcripts, a whole lot of material, yes.

Q All right. Are we talking about just a stack of maybe a foot of paper?

A No, we're talking about probably two four-drawer filing cabinets stuffed full of material that I have on this case.

Q And as you reviewed all of this material, did you formulate opinions regarding the actions of State Farm in the handling of the Campbell file?

A I did.

Q And would you just summarize them, and then [66] we'll go into detail about them.

A Well, they unreasonably withheld payment to the injured people and left the Campbells exposed to an excess verdict. It was clear that there was the potential of an excess verdict against the Campbells from early on, and State Farm failed to act appropriately when they, during the stage when they had the duty and the obligation to gather the facts.

They misrepresented the nature of the case to the Campbells, and they knew what they were doing. They knew that they were representing that it was a defensible case, that it wasn't, they knew the Campbells would rely on it, and they did, and they basically led them through what ultimately happened.

My opinion is that it was wrongful claims handling, a clear example of it.

* * *

[67] * * *

Q Tell the jury a little bit about Mr. Ospital, the young man who died.

A Todd Ospital was a fine young man with great promise. He was a good student, lived a clean life, and was basically headed for a profession. He had every gold star on his side, let's say, from what I read of [68] the record. There was no dispute that he was an outstanding young man.

Q When an adjuster determines damages to decide what he or she should do in the adjusting process, would he or she consider things such as the decedent being a Sterling Scholar?

A Sure.

Q Would they consider things such as lettering in four different sports?

A That's right.

Q Being class president?

A Popularity, physical agility, mental agility, or intelligence. But basically being a pleasing person that everyone got along with was another factor that appeared in the record.

Q And were all of those true with Mr. Ospital?

A Yes, from what -- I never saw anything to dispute that.

Q Was he a pre-med student?

A Yes.

Q At the time at Utah State University?

A Right.

Q Now determining the damages, that is, "What is a claim of wrongful death worth?" do you take into account the parents' situation, and what they have lost [69] vis-a-vis their child?

A You take that into account, and several other factors.

Q Do you take into account, for example, the parents, and what type of people they are, and the relationship they had with their son?

A Yes, because remember what I said, when you get to the end of one of these personal injury cases like the Logan trial, at

the end of the case the attorney representing the Ospitals, and the attorney representing the Slushers stand there, basically after putting their evidence on, and they write down suggestions on the board. And it's the jury's job to evaluate what they've seen, and make the decision about the value of these things.

Q How about Mr. and Mrs. Ospital, now, and their relationship with their son? Do you remember how many children the Ospitals had?

A I don't, but they were close and supportive to this young man.

Q Was this a special relationship between parent and son?

A I believe so, yes.

Q Are the Ospitals, what kind of witnesses did they present themselves to be?

[70] A From what I can tell, outstanding, they're very fine people.

Q Was there anything about the wrongful death claim, as an adjuster, that you would say, "Oh, probably the jury won't consider this to be a valuable claim"?

A No. It was a valuable claim, and that was known right from the start.

Q Now, in your opinion, Mr. Fye, was there any doubt to an adjuster that this claim would have exceeded the policy limits of $25,000?

A No --

MR. BELNAP: Excuse me, Mr. Fye.

THE WITNESS: Excuse me.

MR. BELNAP: I'm going to object as calling for him to conclude what is in the mind of another person, rather than expressing his opinions, Your Honor.

MR. HUMPHERYS: I asked him to render an opinion regarding a reasonable and prudent adjuster.

MR. BELNAP: I don't think that's the way the question was phrased.

THE COURT: Rephrase it.

MR. HUMPHERYS: All right, I'll rephrase it.

Q (BY MR. HUMPHERYS) Based on your opinion, would there be any doubt in the mind of a reasonable and [71] prudent adjuster, I should say the mind of a reasonable and prudent adjuster, that this claim would exceed $25,000?

A None.

Q Now, what about Mr. Slusher? Tell the jury a little bit about his damages and his situation.

A Well, Mr. Slusher suffered fractured teeth, a fractured nose, he had a terrible injury to his left arm, or portions of the muscle were torn loose, he had a severe left leg injury, left knee injury that required, I believe, some surgery. He had a right ankle injury, he had a punctured lung.

It wouldn't have been, it wouldn't have been unusual for an accident victim to have died from injuries like this, but he was given good care, he recovered very well. He had some extensive reconstruction surgery, and I understand he's done very well later.

But what he had done was extremely expensive, and his medical bills mounted up over $20,000 in just medical bills.

Q Did he receive free medical service from a charity hospital in part of these surgeries?

A Yes. I don't remember how that came about, but I remember there was a lot of his hospitalization [72] just got beyond what a person could pay.

Q Now, were those ever claimed, the reasonable value of those charity medical bills ever claimed against State Farm?

A I don't think so.

Q And so State Farm had responsibility to pay only that which Mr. Slusher was responsible for?

A I believe that's right.

Q But in terms of evaluating the loss, from what the claim would be worth, as you go through this process as a reasonable and prudent adjuster, do you consider the full amount of the medical treatment he received?

A You do. And it's like I said at the board, there. You look at the individual, and you try to analyze and learn about what the injuries mean to that specific individual. You try to learn the rate of recovery, the pain that was involved, the nature of the medical treatment, and naturally, the facts of the accident enter into it. The nature of the Campbell accident, here, was that Mr. Slusher, under any circumstances, was just driving along, an innocent victim of what happened up ahead.

Q All right, going back to the injuries for a minute. Was it your understanding that he was in [73] intensive care for at least a week or more?

A I don't remember.

Q Do you recall that he had a disability rating from his doctor of nearly 50 percent?

A Yes, it was a very high disability rating.

Q What does a disability rating mean to an adjuster as he's trying to determine the value of a claim?

A When you look over a lifetime of what an injury, how an injury will affect someone, if there's a 50 percent disability, the person may be able to return to work, but that's not to say that sometime in the future the disability's going to catch up with you.

Injuries like this frequently become quite severe, as you age and your body doesn't treat you quite the way you want it to. I can speak from personal experience, trying to play basketball. But when you age and you've had traumatic injuries and fractures to bones, you develop arthritic problems, you develop disabilities later that will impinge on your earning capacity and on your ability to enjoy your life, to pursue your private enjoyment of your life.

So disability ratings are very useful to project ahead over some life span of the decline of earning capacity and the decline in life enjoyment.

[74] Q Now, was Mr. Slusher a labor man?

A A mechanic, I think he was.

Q A welder?

A A welder, yeah, that's right.

Q Was he the kind of person that would be able to sit at a desk by retraining or re-education? Or was he basically a blue collar worker, as it's sometimes referred to?

A I think he was definitely in the blue collar area.

Q Why is that a factor to consider when you're talking about rather severe injuries to the body?

A A job with the tools requires getting out there at 8:00 o'clock in the morning and hitting it. Doing a day's work day after day after day for the rest of your life. And it's difficult, even when you're completely well, sometimes. And when you're impaired it becomes much more difficult, particularly as the aging process goes on.

Q Was there any question in your mind -- Or let me put it this way. Is there any question, in your opinion, that a reasonable and prudent adjuster would know that this claim of Mr. Slusher would exceed many times the policy limit of $25,000?

A Nobody in the insurance claims business would [75] have any doubt that this claim was worth far more than $25,000.

Q Now, did State Farm have an opportunity, within two or three months after the accident, to settle this, the Slusher claim, for $25,000?

A Yes, they did. Mr. Barrett, I believe in Logan, represented the Slushers, and they were, he made that demand.

Q And did State Farm refuse the demand?

A Yes.

Q Was this even before they filed a lawsuit?

A I think so.

Q And so if this would have been accepted, would the lawsuit have even proceeded?

A They could have stopped it right at that point, there wouldn't have been a lawsuit.

Q And if there hadn't been a lawsuit involving Mr. Slusher, obviously there would have been no trial, and proceedings -- In other words, let me ask it this way. When you settle a claim like Mr. Slusher's and you pay the twenty-five that he asked for, does that wrap up that entire claim forever?

A It does. In exchange for the funds, you have to sign a release. And the release is a general release that just extinguishes all the claims.

[77] * * *

Q All right, Mr. Fye, when you analyzed the Campbell file in the beginning, and you described at what point in time this information becomes apparent to the adjuster. I want you to describe the evidence in various ways that you found that would indicate fault on the part of Mr. Campbell, or no fault.

A Okay. What occurred here, at the top of this, we'll say that Logan is up here, and Brigham City is down here. In just a general scheme of things. But in this Dry Lake area, the accident scene looked something like this, with a center line. And outside this fog line there's a, oh, about a five-foot shoulder or so.

There's a crest of a hill, which is kind of a summit, right here, and the Ospital vehicle, which is this little Pinto-like or Mercury Bobcat vehicle made by Ford Motor Company, came over the hill this way. And [78] Mr. Campbell was headed this way, and basically there were six vans in a sort of convoy, or caravan. And this was Mr. Slusher.

Q Was there a pickup truck, perhaps, in the middle of them?

A I never was able to get clear exactly where that was. There could have been at least one other vehicle in here that was described by the witnesses. But as to the van drivers who were available to be witnesses, they were right in here. There was a Mr. Chipman right ahead of him, the Gerbers were up here, Mr. Byrd was here, and I think this was Mr. Zucca, and this is Mr. Harding.

And so as this accident developed, basically, it was an unsafe passing accident. And when I say unsafe passing, I mean that, when adjusters evaluate whether someone broke the rules or did right or wrong, in claims adjusting, you know that when someone pulls out into a lane of through traffic, as a generality they become responsible for anything bad that happens.

Let me show you what I'm talking about. If you drive up to an intersection and there's a stop sign controlling here and here, and a car stops at the intersection and then pulls out ahead, and gets hit by an oncoming car, when you pull from a stop sign into a [79] through lane of traffic, you become responsible for what happens, as a generality. You undertake the responsibility, to only enter that lane when it's safe to do so. Completely safe to do so. Not just a little bit safe, but completely safe.

The same thing is true if you're pulling out of the parking ramp at the supermarket and there's no stop sign, here, but you're coming from a private parking lot on to a highway where there's through traffic. You have to avoid interfering with the through traffic. And if you do that, you have a legal responsibility for whatever bad that happens.

In the last case, there was a display about what the passing laws are in Utah, and you simply, it's what I said. You have to make sure that it's safe to pass before you do so.

But anyway, Mr. Campbell's car went from this position, I'll put a C in it, here. Up around this area, apparently saw the car coming, Mr. Ospital. And Slusher, somewhere in here. And it looks like what happened is that Mr. Campbell moved over, and Ospital lost control. And by that time things had moved forward -- remember, this is a moving scenario -- but the Ospital car came down here and had a severe impact with the Slusher vehicle.

[80] Mr. Campbell's testimony, at best, is that he got back in here before the loss of control, and he said that he was back in there one second. If that's true, he's at fault. The reason being that that's just not enough time for an oncoming car to proceed,

avoid, and take evasive action. Remember, drivers can only do two things when they perceive an obstacle. They can brake or steer. So Todd Ospital, according to the physical evidence, did his best to steer, lost control, and wasn't able to keep it.

Now, the evidence available to an adjuster, in many of these cases, starts particularly in the circumstances. Remember that when this was reported, when Mr. Campbell reported this to State Farm, he told the insurance agent, no contact, and no ticket. And so the insurance agent didn't tell State Farm about it for about sixty days.

But when he finally reported it to the claims office, the first thing the claims adjuster did was talk to the police officer. And he learned -- this was an Officer Parker -- he learned the rudiments of the accident, and he actually took a statement from Officer Parker, who said there were several witnesses who blamed Campbell. I'm not sure he mentioned an exact number, but I think he said four witnesses or more.

[81] Well, when you look at the legal liability situation, as a claims adjuster would, you'd have a situation, here, where you had several eye witnesses.

There were also some people, a Mr. Husbands and a Dr. Palmer, I believe, who were following, who saw some of the events. But Chipman had a front row seat, the Gerbers, Hardings, Zucca, Byrd, all had impressions of how this scenario occurred.

In an accident people don't always relate accidents exactly the same way, and it's not unusual that when an adjuster gets versions of an accident, there will be some changes, some differences, some conflicts. And that's a normal situation.

But basically what happened here is there were essentially all these witnesses who ascribed the fault to Mr. Campbell.

Q Excuse me, just a minute, if you would.

MR. BELNAP: Because of the difficulty of seeing, Your Honor, may I just clarify that last answer, so that I'm clear?

THE COURT: You may.

MR. BELNAP: You have circled all of the van drivers as attributing fault to Campbell. Is that how you've done it on the diagram, Mr. Fye?

THE WITNESS: Essentially, yes.

[82] MR. BELNAP: And that's the basis for your opinions here, among others?

THE WITNESS: (No audible answer.)

Q (BY MR. HUMPHERYS) Now, Mr. Fye, did some of these witnesses observe more than others?

A Yes.

Q Did any of them indicate that Mr. Campbell was not involved, or not at fault?

A I don't remember any of them indicating that he was not involved.

Q And taken collectively, and the bits and pieces that each saw, do all of them support the fact that Mr. Campbell was at fault?

A Yes, taken as a whole, which is how I was describing this evidence, there's a fairly overwhelming body of oral testimony among these six people that implicate Mr. Campbell as being at fault.

Q What I'm going to do is, I'm going to list each of these that you have indicated, the Gerbers, there was Gerber's wife, Pat; is that correct?

A Yes.

Q Dave Chipman, Ken Zucca, Mike Gerber, and Alger Harding?

A Yes.

Q And any others there that indicated -- Well, [83] I guess -- Did you include Mr. Slusher in that?

A I did.

Q Okay. Now, let me ask you about Mr. and Mrs. Campbell, since we're dealing with the witnesses. Now, these are the fact witnesses. Did Mr. and Mrs. Campbell say things that would absolve them from responsibility, or did they say things that, to a fair-minded adjuster, would indicate that there may be responsibility? How did that come out?

A Well, I think they tried to express themselves in a way that they would absolve themselves. I think this was a very difficult pill to swallow. It would be difficult for anyone to be in these circumstances and have --

This was a terrible accident. And so that generally their statements were, "I didn't hit anybody. I didn't cause this. It wasn't me." And that's a natural reaction.

Q You mentioned that Mr. Campbell talked about, and gave sworn testimony that he was able to get back in his lane one second before the Bobcat passed him.

A Yes.

Q In terms of speed and time, is one second enough time to allow Mr. Ospital to keep control of his car without being interfered?

[84] MR. BELNAP: Your Honor, let me just pose an objection in terms of lack of foundation from this witness. He's not qualified as an accident reconstructionist.

THE COURT: All right, lay some foundation.

Q (BY MR. HUMPHERYS) Mr. Fye, give the jury some background regarding your accident investigation experience.

A Well, I've been investigating accidents and fires for over forty years. In the early eighties I taught police officers and firemen investigative techniques at the University of Alaska. I was certified as a police, I was certified by the Police Standards Council to teach police officers accident investigation in 1983. I've never been an accident reconstructionist in the sense of a technical engineering portion. But in terms of investigating accidents, I've had quite extensive case-by-case background.

MR. BELNAP: May I voir dire and make an objection, if there's going to be continuing questions on this line, Your Honor?

MR. HUMPHERYS: I am not trying to give or elicit opinions regarding expert opinion on reconstruction. And I'll phrase the question this way.

Q (BY MR. HUMPHERYS) To an adjuster, with [85] basic investigating training that is typically offered through an insurance company, would the fact that Mr. Campbell said he arrived back in his lane of travel only one second before the Ospital car passed, each vehicle going somewhere about 55 miles per hour, would that indicate to a reasonable adjuster that that would be sufficient time?

A What it would indicate to an adjuster is that a hazard was created, a hazardous situation. Because you have reaction time, braking time. If you make decisions, every little action that your body makes involuntarily while you're making the decision to brake or steer eats up that second. And that just --

Remember, you're an adjuster, you're trying to determine if there's a possibility that your client will be found at fault, here, and you realize that that's just not enough time. That there was a hazardous situation created for the oncoming driver. There was a loss of control.

And that's something that I was trying to go back to, and that when you're pulling out of the supermarket, when you're pulling from the stop sign. It's really not enough to say, "Well, gee, this car's going five miles over the limit." That doesn't absolve you of responsibility. The reason --

[86] See, what happened, here, is the Ospital automobile lost control. If this passing maneuver would not have been done, there would not have been a loss of control. This is not a complicated scenario. This is a scenario that is seen quite a bit in claims adjusting.

Q Okay, now, when I was asking you about a reasonable adjuster, did Mr. Summers conclude that this was a hazard created by Mr. Campbell?

A Yes, he did.

Q I'd like to draw the jury's attention to what has already been admitted into evidence, the BI preliminary report. Tell the jury what that is once more.

A There's a requirement that the adjuster report in the claim file, and therefore the supervision of the people that are reviewing the claim file, the rudiments of what the accident facts, and what the issues are, and that's done at State Farm in what's called a BI preliminary report. And this is the one that Mr. Summers filed --

Q I think his name would be at the bottom, right here?

A Yes. Can I do this pointing, here? I want to point a couple of things out.

Q You bet. This is a State Farm document, is [87] it not?

A Yes.

Q And part of the claim file from State Farm.

A Yes.

Q Go ahead.

A Well, anyway it says BI preliminary report, July 17th. Remember, this accident happened back here on May 22nd, and so the date of this report is about sixty or better -- Well, not quite sixty days later, reflecting that later report. And he says here, "Late reporting."

Now, his brief facts of the accident says, "Allegedly NI," that means named insured.

Q That would be Mr. Campbell?

A Mr. Campbell, "going north on U.S. 88-91, passed a line of several vehicles also northbound on U.S. 89-91, apparently had to cut into the lane of traffic due to the approaching southbound claimant vehicle," that would be the Ospital vehicle, "which vehicle, because of the hazard, pulled to the right, hit a soft shoulder, lost control, travelled across center, and hit claimant 2," which would be Mr. Slusher's car.

Q So Mr. Summers used the word "hazard"?

A Yes.

Q The same word you're describing would be [88] obvious to a fair-minded adjuster?

A That's right. So he hit him head on, and then he points out no contact with the insured vehicle. And then he says, "Fatality, serious injuries."

Q So that was known very early to State Farm?

A That's right. Mr. Slusher, multiple fractures and internal injuries. And down here in the remarks, "Slusher injuries severe, prognosis not yet determined." And of course he had the obligation to tell the company about why the late report, so he did that down at the bottom.

This is a point in time -- I'm doing this backwards -- July 17th, 1981, where liability is reasonably clear.

Q All right. With this BI report -- Let me back up. Do you feel this is a complex accident that is hard to figure out?

A No.

Q Would common sense tell you that --

A Well, you can make it complex if you want to, but no.

Q Would common sense tell a reasonable adjuster that there would be exposure on the part of Mr. Campbell?

A Yes. And with the limits on the policy of [89] $25,000 apiece, there's no contest.

Q Now, you mentioned that Mr. Curtis Campbell said some things that might even implicate his own fault?

A That's right.

Q Maybe unknowingly. But didn't he also try and absolve himself from fault?

A He did.

Q So he would be a witness, given what he has said, on both sides of this, would he not?

A That's true.

Q And his wife, Inez Campbell, did she have any testimony that would indicate one way or the other of whether there was fault?

A Well, I believe -- Her recollection was very slight, but she saw him pull over fairly close to the campers. And I don't think she saw the oncoming car. But --

Q What would that mean to a fair-minded adjuster, that she saw him cutting close to the car as he was trying to complete his turn?

A That indicates to me that, not only was Mr. Ospital becoming aware of the hazard, Mr. Campbell was becoming aware of the hazard, and was, himself, steering, he wasn't braking, he was accelerating to get [90] out of the hazardous situation.

Q Would that testimony, then, indicate on which side, fault, or partial, or no fault?

A Well, in my analysis it would indicate fault.

Q Would it also indicate no fault?

A It could.

Q So that would be on both sides of this scale.

A That's right.

Q Now, you talked about the investigating officer. Was that Trooper Parker?

A Yes.

Q Did he give testimony that Mr. Campbell was not at fault, or did he give a statement to that effect, a recorded statement?

A Yes. You could interpret it both ways. You remember, Trooper Parker had kind of a different responsibility than an insurance adjuster did. He had the responsibility of a criminal investigation. And it was very clear that he had no zeal to bring criminal sanctions against Mr. Campbell, because of, obviously because of his personal circumstances.

Q Did he relate in his statement to State Farm that there were multiple witnesses that put the fault on Mr. Campbell?

A When State Farm took the statement, and he [91] said, particularly in that statement, that there were several witnesses who implicated Mr. Campbell.

Q Did he also indicate that when he went to the hospital he heard Mr. Slusher talk about whether Mr. Campbell was at fault?

A Yes. His version of that conversation was that Mr. Slusher absolved Mr. Campbell from being at fault.

Q And this was about a week or so, while he was still in the hospital?

A That's right.

Q So would he be a witness on either side, or both sides?

A Both sides at that point.

Q Now, on the part about the hospital, and the alleged admission by Mr. Slusher that he thought it was Campbell's fault, was that corroborated by either Mr. Slusher or his parents?

Let me ask you, first of all, do you understand that his parents were present during this conversation?

A From the record, I was, that they came forward and told the story about that in the Logan trial.

Q Now, regarding that, did Mr. Slusher deny [92] under oath that he had said that to Mr. Parker in the hospital, that he thought Campbell was not at fault?

A He did deny that, and his parents corroborated his denial with a basically, his mother, I think it was, remembered another version of that, how that came about.

Q What is your understanding, after reviewing the transcript of the Logan trial, that she testified about?

A That Mr. Slusher was being a little hard on the officer for not writing a ticket.

Q To Mr. Campbell?

A Yes.

Q Did she say that he ever -- Was she concerned -- Did it appear to you, in reading that transcript as an adjuster, that her testimony was credible?

A It seemed to be. It all held together.

Q Was Mr. Slusher's testimony that, denying what Trooper Parker had said, long before there was any settlement with either the Ospital estate or Campbells?

A Mr. Slusher's testimony was taken, sworn testimony, said he never corroborated what Trooper Parker, or Officer Parker said.

Q What does that mean to a reasonable adjuster, [93] if Mr. Slusher, who has sued both Campbell and Ospital, what does it mean that, during this process, he gives sworn testimony that absolves Ospital, and implicates Campbell? Would there be a motive to do that if he were suing both?

A No. In fact, the motive would be the other way. He would try to blame both oncoming drivers to get more insurance money.

Q Would the testimony of Mr. and Mrs. Slusher, then, corroborate fault on the part of Mr. Campbell, or no fault?

A Of whom?

Q Would Mr. and Mrs. Slusher, that is the parents, would their testimony corroborate fault or no fault on the part of Mr. Campbell?

A Fault, because they, those witnesses take away this, it's called impeachment. When this officer would describe that conversation in court, it would be for the purpose of showing that Mr. Slusher isn't telling the truth. And it basically corroborates that what Mr. Slusher was going to testify at trial, that is that Mr. Campbell caused the accident, was the truth.

Q Now, we've already looked at Mr. Summers' conclusion. Did he ultimately, as far as you understand from the file and your review of the material, did he [94] ultimately determine that Mr. Campbell was at fault, at least to some degree?

A Well, in that report he did. But are you talking about the report that he had to change?

Q No, I'm talking about as he has testified.

A Oh, yes. Mr. Summers has testified that he understood this accident to be the responsibility of Mr. Campbell, and that he was asked to change the report, and did.

Q All right, let's talk about experts, now. Were there experts in the underlying case that gave testimony?

A There were three experts, I believe, all for the purpose of doing the technical reconstruction of the accident.

Q And did each of them render opinions as to who would be at fault in causing the accident?

A Well, all three rendered opinions, at some point, that Mr. Campbell was at fault. But at the trial, Mr. Dahle's views had changed, and he testified that, in a way that would absolve Mr. Campbell's fault.

Q Let me ask you about each of the experts. First of all we had Trooper Robert Dahle. Was he an expert used by State Farm?

A Yes.

[95] Q And he was hired by State Farm?

A Yes, he was an expert for the Campbells, used by the Campbells' attorney.

Q What was his position in the highway patrol, do you remember?

A He was experienced --

Q Was he a trooper? A sergeant? A captain? If you remember. I know there's a lot, here.

A He was a sergeant or a corporal, or something above the entry-level description. I don't remember exactly.

Q I'll represent to you that he was a trooper. And we can verify that later.

A I thought he was a sergeant or something.

Q All right. In any event, was he highly qualified in accident reconstruction?

A Well, his qualifications were kind of growing. He had some experience in the field. He had just, relatively recently, started offering, he had just recently started offering his services to analyze these accidents, and had been taking classes from the other two experts in the case.

Q What does a reconstructionist do to help a jury, or an adjuster, or the parties, to determine fault?

[96] A Well, he or she collects data, and analyzes data, and comes to conclusions about what that data might mean. And in the case of this accident, it would mean taking data about the skid and scuff marks that were left by the Ospital vehicle, it would include information about the relative weights of the vehicles that collided.

And what you're trying to determine is what's called the delta-V, that is the difference in velocity between the cars that collided, and it helps when you analyze an accident to try to calculate speeds.

So an accident reconstructionist will basically -- pardon me for using up paper --

MR. BELNAP: See if I offer you my pad again.

THE WITNESS: I appreciate this offer, because that other pad was more wrinkled than I am. Anyway, he looks at what existed at the time of the collision, he looks at what conditions were prior to the collision, and he looks at conditions after, or post collision.

And basically accidents are caused by three factors: Environmental, mechanical, and human. And so an accident reconstructionist tries to fill in the blanks and learn what's knowable about an accident.

In many ways, when you're an accident and [97] fire investigator, when you get an assignment, it's like a ticket to the end of the movie. You get to see the last scene, which is what remains, here, and you can judge the behavior of everybody by what remains there. But you know, sometimes you have to ask the people that saw the movie what happened.

And so what you try to do is just accumulate information until you know what happened, and that's what an accident reconstruction is.

Q (BY MR. HUMPHERYS) Did Mr. Dahle investigate this case as part of his responsibilities with the highway patrol?

A He assisted in the investigation. He assisted Trooper Parker.

Q Trooper Parker. And initially was there evidence in the file that indicated that he had concluded that Mr. Campbell was at fault?

A Not in State Farm's file, necessarily, but -- No, there was some -- Well, in State Farm's file, in their attorney's file, there are notes in there that Mr. Dahle considered Campbell at fault, and Mr. Bennett, the Campbells' State Farm lawyer, said that, "He'll only be a useful witness if we can get him to stop saying things like, 'Campbell's right in the middle of this,' and, 'Campbell was at fault.'"

[98] Q You mean that was actually in his file, Mr. Bennett's file?

A That was in Mr. Bennett's file, yes.

Q Now, was there other evidence that Mr. Dahle had said it was Campbell's fault?

A He had contacted an Allstate adjuster, and I forget her name.

Q Joyce Zollinger?

A Yes, and indicated that Campbell was at fault.

Q All right. At trial did he testify that Campbell was at fault?

A No, the other way.

Q All right. So given what you know as a reasonable adjuster, would he be a witness of fault, or no fault, or both?

A Well, he came out squarely on both sides.

Q Now, let's talk about the other two experts. Who did Mr. Slusher retain?

A Mr. Slusher retained another officer, I believe, with the department, and that's Newell Knight.

Q Was he a captain?

A I'll take your word for it.

Q Okay.

A I've proved less than reliable on remembering [99] titles.

Q Had he been involved in reconstruction most of his career?

A Yes, he was very experienced at it, very capable, and had quite a local reputation for it.

Q Was he heading up the Utah Highway Patrol accident reconstruction department?

A Yes, his qualifications were very good.

Q Did he teach at universities and seminars to both claims adjusters, police, lawyers, and others?

A Yes. He taught accident investigation and reconstruction, technical reconstruction.

Q All right. Now, did he place any blame on Mr. Ospital?

A I don't believe so.

Q Did he place blame on the part of Mr. Campbell?

A Yes.

Q One of the things -- Well, let me ask you. Did he use a very common sense approach to analyzing this case?

A Very common sense.

Q While you're describing that, let me pull out this diagram that was used in opening statements.

MR. HUMPHERYS: And I'll represent to the [100] court, and I think counsel agrees, this is a reproduction of Mr. Dahle's diagram that was admitted into evidence in the first trial, with very minor alterations which had to do with some writing on it. It did not have any bearing on the measurements, the markings on the road.

Q (BY MR. HUMPHERYS) Now, as you read his testimony, can you describe to the jury his common sense approach to analyzing whether Ospital was speeding, and whether Mr. Campbell had interfered with Ospital?

A As I recall, he was trying to explain the physics of two bodies colliding by using cue balls on a table, or a pool table sort of thing. Like even though the Pinto is a smaller vehicle than this, if you attribute a great deal of velocity, combined with the weight of that vehicle and velocity, it would have stopped this vehicle in its tracks and pushed it back, had it been going the excessive speeds that were being claimed.

Q Let me see if I can interrupt you and bring this outward, a little more visible to the jurors. And let's place Mr. Slusher's vehicle at the approximate location of impact. And the red marks are tire marks, aren't they?

A Yes, these are the marks left by the Ospital [101] car, and these were the marks left when Mr. Slusher -- Remember, he did two things. He braked and he steered. Over to the right and braked.

Q All right. Now, if you follow this down to the point of impact at approximately this location --

A He just used the example, if this had been an extremely excessive speed, this car would have displaced, or the Slusher vehicle, aft, backward.

But instead, what happened is the Slusher vehicle, being a weightier car, basically hit Ospital's car and pushed it back, and then caromed into the ditch. That is ricocheted, or veered, because of the impact. This impact was not true head on, it was kind of corner-to-corner head on. And vehicles that collide like that will impart motion to each other.

Q Now, did the Ospital car stop or move forward after impact?

A As I understand, it stopped, and even moved backward.

Q It went backward to the point at rest? Do you recall approximately how many feet it was pushed backward?

A I don't.

Q What significance is it to an accident reconstructionist, or I should say to an adjuster, a [102] reasonable adjuster, when speed of a car, such as the Ospital vehicle, is at issue? When he was hit and pushed back many feet?

A Well, remember that it's not an issue. I mean basically, when you determine fault, you could go 200 miles an hour if there's not a passing car. If this lane is open, there's no hazard. Speed is only an issue if you're trying to somehow create a reconstruction that makes this more complicated.

This the real issue is, was this speed so outrageously unreasonable, was it a shocking speed? And the answer is no. The physical evidence from the point of rest, and just the dynamics of how the vehicles met each other and came to a rest, just shows that at highway speeds, the speed limit or less, and braking --

And I don't know exactly what the Slusher speed was at the point of impact, but had this vehicle been traveling at a shocking rate of speed, like 85 or 80 or something, at point of impact, you would have seen a completely different result with the vehicles.

Q Now, is this what Newell Knight was describing when he was saying pool balls that, if two pool balls hit together, that if one is traveling at a much higher velocity or speed, it would not be pushed back like that?

[103] A That's right. Actually it helps when you've actually seen the results of impacts like that, you have better data. I would suspect that if the Ospital vehicle was going 80 miles an hour at impact, that you would not be able to recognize the vehicle. It would literally be in pieces.

Q All right. Now, then Newell Knight rendered testimony in favor of Ospital and against the Campbells. Was there another expert that was retained?

A Yes, Dr. Watkins from Utah State. He's an engineer.

Q And does he specialize in accident reconstruction, as far as you know?

A I think it's a side line with Dr. Watkins. Teaching and engineering is his primary field.

Q Was he involved in teaching Trooper Dahle?

A Yes, he has -- It's not to say he's not interested in this. He's very interested in it. But he, his work at the university is his primary field.

Q Based on the evidence that came out at trial in Cache County, was Mr. Dahle a student of Dr. Watkins?

A Yes.

Q And did Mr. Dahle go to him when he had a particularly difficult case?

A Yes.

[104] Q He sought out Dr. Watkins for advice?

A Right, Dr. Watkins had a much higher level of training and understanding of the math and physics, the technical aspects of accident reconstruction.

Q Did he render any opinion regarding Ospital or Campbell's fault?

A Well, he basically came down on this side.

Q Mr. Campbell was at fault?

A Yes, he appeared as a witness for the Ospital family.

Q Did he also explain to the jury the errors that Trooper Dahle had made in his calculations?

A Yes, there was quite a discourse about that.

Q Did Trooper Dahle rely on measurements by Mr. Parker that were taken on the night of the accident?

A Yes, he did.

Q And that was part of how he formulated his speed calculations?

A Correct.

Q To you, as a reasonable adjuster, what do you know about the physical evidence which would give you concern about relying on Trooper Parker's measurements taken the night of the accident?

A The accident scene measurements taken at night and under those conditions, you'd like to recheck [105] them. When a tire mark becomes from a skid mark to a scuff mark, or there's a transition, there's too much room for error. And when Trooper Parker went out the following day to re-measure some of the things he did, he found some error. But he didn't re-measure the critical ones.

The idea being that, in the evidence, they'll call it, I believe, a critical curve, or a critical scuff mark, or something like that. But basically what that refers to is a critical speed at which a vehicle can no longer negotiate an arc.

And the tires break loose, and if you put a pin down through a car, down through the center of gravity, the vehicle starts to yaw. It means to rotate. The rear, you're going around the corner, and it breaks loose and it starts to yaw. And that's what they're talking about when they say a critical curve, or critical scuffs.

If you're going to reconstruct from that data alone, then that data has to be virtually unassailable, or unchallengeable.

Q What is the measurement, here, that is critical in determining speed, based on the way Trooper Dahle did it? Or Trooper Parker. In other words, in this arc that you've drawn, here, on the board, just [106] explain to the jury how this measurement takes place to determine its reliability.

A I'm sorry, I'm going to have to duck that one, because I'm, I don't remember precisely the measurement that he was taking.

Q I'm not asking for the dimensions. But do you strike a cord across?

A What you're trying to do is learn the length of the arc. When you have an arc that straightens out, you try to find this point, which is called the point of tangency. A straight line is a tangent that comes out of that.

And what you're trying to do, basically, is learn the length of the arc, and the point at which a loss of control occurs. I'm sorry, it's beyond me to recall exactly what they were measuring at.

Q All right. Now, was this measurement ever redone after the night of the accident?

A I don't think so.

Q Is this the critical measurement, that is the distance between here and here, which you determine the speed? I mean is that the critical part?

A Sure. Well, all of the measurements are critical. The length of the arc, the -- Because what you're doing is building a little mathematical model, [107] geometric model, and you have to have accurate data. If you're going to get an accurate velocity, you need to have accurate data to calculate it.

Q When the speed, as computed by Trooper Parker, of around 75 to 80 miles per hour, and then Trooper Dahle, using specific measurement such as this, does not seem to make sense with the other data, what does a reasonable adjuster do in terms of trying to determine the validity of their calculations or speeds? Speed calculations.

A Well, remember that at the point this case should have been settled, this shouldn't have even been involved. This was not an accident that needed this kind of analysis.

But if you're talking about down the way, then you have to just basically analyze the methodology to determine whether it's going to hold up. If you have three engineers, or three reconstructionists, and basically there is dispute, you have to go to the authenticity and the accuracy of the underlying data.

Q Did Trooper Parker, on the night of the accident, take measurements?

A Yes, he did.

Q Did he go back the next day and take additional measurements?

[108] A He did.

Q Did he make errors in his measurements the night before, admittedly?

A He did, he admitted that.

Q Did he ever remeasure this critical scuff curve?

A No, that's the portion that he did not redo.

Q Was his investigation and measurements done in the dark?

A Yes.

Q Was that a Memorial weekend, with heavy traffic?

A It was.

Q With flashlights?

A Yes, as I recall, it was artificial lighting that was portable.

Q If you began to take this measurement, and measure it just a little bit off from where the yaw mark begins, would that completely alter the reliability of that measurement?

A Well, that's the nature of the, was the nature of the testimony in the Logan trial and the reconstruction, that just very small differences in where you decided to measure, you know, just in the inches, would affect the speed calculation by up to 25 [109] percent. And it didn't allow you very much room for error before you got tremendously different speeds.

Q If you look at the basic configuration of the skid marks, does that indicate to you that, based on the physical evidence, that there would be at least some fault attributable to Mr. Campbell?

MR. BELNAP: Objection, lack of foundation.

MR. HUMPHERYS: Okay, let me back up, let me rephrase it.

Q (BY MR. HUMPHERYS) Mr. Fye, to a reasonable adjuster that's trying to resolve what appears to be some conflicts, would the basic physical evidence of the skids, where the locations of the vehicles were, would that be consistent with the fact that Mr. Campbell had some fault in the accident?

A It would, for the reason that, if you have an oncoming car that otherwise has no reason to be outside that fog line, other than a hazard that your insured might create, that tells you that there's the potential for fault.

Q All right, now, would the tire marks that put the Ospital car outside of his lane of traffic in a curve --

A That's what I just said. If you think of his lane of traffic on the right being bounded by this fog [110] line --

Q This is a fog line, right here?

A That's what I call a fog line, yes.

Q That's the white line that borders the lanes of traffic?

A That's right. It's to give you a visual separation as you're driving down the highway, to keep you in your lane. If you get outside that, you're outside your lane of travel.

Q All right. Now, now a couple of more questions and we'll be done with this area, and if the court wants to take a recess that would be fine.

Does the fact that you have severe injuries and the death of a very fine young man, does that have a bearing on whether or not an adjuster should consider fault on the part of the insured?

A It does.

Q And how and why does that even become a factor?

A It becomes a factor, because when you look at the totality of who the people are, and the reasonableness of their behavior at the accident scene, that's what juries have to evaluate. And Mr. Ospital stands up to muster, let's say as a person that, if you're thinking of somebody out there misbehaving in an [111] automobile, doing something horribly wrong, this young man doesn't really fit that picture.

Q All right, would the injuries and the emotional factor have a tendency to sway a jury to put fault on Mr. Campbell?

A Well, that's a hard question to answer. But my answer would be that they would view this accident as being one that was set in motion, and the severity of it and the consequences of it are a great tragedy to everyone. But basically, when you're trying to establish who was responsible, you go back to the driver who set the events in motion, and that was Mr. Campbell's pass.

Q All right. Did the verdict itself of the Logan jury indicate that Mr. Campbell was at fault?

A They found that he was 100 percent at fault.

Q And did the jury last November find that Mr. Campbell, that there was a substantial likelihood that a jury would find him at fault?

A They did. This portion of the case has already been decided, and the portion about whether State Farm acted in good faith has already been decided.

Q In your opinion, Mr. Fye, given this review of the facts, is there any way that a reasonable adjuster would conclude that there would be no [112] possibility of fault assessed to Mr. Campbell?

A No. Unequivocal no. You just can't look at the facts of this accident, if you're conscientious at this kind of work, and say, "This guy's going to escape liability." No, it's not going to happen.

Q Would there be any way a company that is trying in good faith to look out for the interests of its insureds, look at a situation like this and determine that absolutely and definitely there was no fault on Mr. Campbell?

A That would be grossly irresponsible for a company to do that. There's no company that tries to dispatch these duties that I've listed, fairly, that would come to that conclusion.

Q Did State Farm come to that conclusion?

A Well, State Farm came to that conclusion as it appears in the file. In other words, they wrote the self-serving memos, and said things like, "This is definitely a case to defend." But that's not what their conclusion was. Mr. Summers told this company, and this company knew --

MR. BELNAP: Your Honor, that's beyond the scope of the question.

MR. HUMPHERYS: I'll ask the question.

THE WITNESS: Sorry.

[113] Q (BY MR. HUMPHERYS) Did the company initially know of the exposure to Mr. Campbell through its adjuster, Mr. Summers?

A Absolutely.

Q And did it follow Mr. Summers' advice that there was exposure?

A No.

Q Did it conclude in its claim committee report that it had no responsibility?

A That's right.

* * *

[114] * * *

(The jury left the courtroom.)

* * *

[116] * * *

MR. BELNAP: Judge, we have a matter that we need to discuss --

THE COURT: Please be seated, everyone.

MR. BELNAP: Mr. Humpherys informed me that he intended to introduce into evidence through Mr. Fye several pieces of correspondence that took place between his office and Mr. Hanni and Mr. Burton during the months of January and February of 1986.

I don't want to speak for him, but as we discussed, I told him that I wanted to bring this up to the court and talk about it before it was put in front of the jury, and I'd like to do that at a time when Your Honor would give us a moment. If now, or if you want to take a break and come back.

THE COURT: We don't have much time. Is this going to be put on this afternoon with Mr. Fye?

MR. HUMPHERYS: Yes, it will be in the next hour and a half, or hour.

[117] THE COURT: I don't think we've got any choice. Let's hear it now.

MR. BELNAP: Your Honor, these letters, if I could just share some of the language, there was some discussion between counsel about settling this case, and these letters go back and forth concerning settlement negotiations for the entire action, not only the judgments, but the, quote, bad faith action, end of quote.

And Mr. Humpherys' letters in response to a letter from Mr. Hanni or Mr. Burton, which may be just very short, are really evidentiary in nature, from his standpoint, a letter speaking about all of the bad acts and all of the bad conduct, and all of the injuries that these people sustained, and why State Farm ought to get these matters resolved.

And under the rules of evidence, offers of compromise in the forms of the communication that are taking place are not admissible. The rule is there for exactly the reason that attorneys need to be able to talk and to communicate.

Now, the fact that the jury was told on the time line, in what Your Honor directed, a very vanilla fashion, that State Farm filed a pleading, or indicated in February of '86, and then a pleading with the court [118] that there was an offer to pay the judgments, that the appeal was not successful, does not argue the case.

But in these letters there's discussion about the fact that the parties have been seriously damaged by the bad faith of State Farm. Mr. Slusher's in desperate need of money. There's been excessive delays and refusal to negotiate. All this time the case is on appeal.

There's been discussions in this letter about the fact that there were offers, about an alleged conversation, that Mr. Hanni indicates never happened, where you have indicated, quote, that "State Farm will not pay any more than the judgments, and you've reiterated numerous times that State Farm would not pay, quote, blood money, end of quote, an expression which I'm uncertain of your meaning. You've further indicated that State Farm would vigorously fight any bad faith action. It appears State Farm is trying to take advantage of the economic and emotional plights of the parties. This has caused stress."

It just goes on and on, and then at the end of this letter it talks about the fact that, "Mr. Bennett related that there was only $25,000 of coverage, and when the judgment came in, that Campbell would have to sell his farm, and otherwise come up with [119] the money to pay the judgments."

So my point, just very briefly concluding it, Your Honor, is that these letters should not come into evidence under Rule 408 of the rules of evidence, and also under Rule 403. If they want to put in through a witness that there were offers, discussion about, just the fact that there were attempts to settle, then perhaps that's admissible.

But to put in a letter from counsel that puts in their version of self-serving conversations, and their position, basically, putting their best light on facts and factors, is just a means of being able to testify when that can't be done.

MR. HUMPHERYS: Your Honor, this goes to the very point, and why I thought this was irrelevant, and we moved to exclude it, all aspects of this, because it opens up a new area. One of the heart of the defendant's defenses, as Mr. Belnap stood up and stuck up on a poster a letter from Mr. Hoggan, and he said, "We did exactly what Mr. Hoggan asked us to do." And he said, "We paid the judgments. We're a victim," he is claiming. State Farm is a victim of this whole circumstance. And that was totally untrue.

And we have no choice but to present these letters to show that that wasn't true. Let me go [120] through them.

January 2nd, '86, it refers to a telephone conversation that Mr. Burton made to me, and he asked if we were interested in settlement. The first time, unlike what Mr. Belnap represented to the jury yesterday.

And he said, here, "During the course of our discussions you expressed a desire on the part of State Farm to discuss settlement. This is the first time since the inception of this lawsuit that State Farm has expressed a willingness to settle the case, with the exception of the letter after the trial where State Farm indicated that it was finally willing to pay the policy limits in full satisfaction of the entire judgments." And then I go through and talk about how the plaintiffs have made demand, and now they were no longer willing to, because they'd been put through so much grief.

Now, what State Farm wants to do is portray to the jury that nothing was going on, that Campbell was protected, the parties didn't suffer any way, and State Farm stepped to the plate, paid the judgments, and there's no complications, and what's the problem? There's no damage, we have -- "Why are

we here?" kind of attitude. And it is wrong to leave that impression with no response.

[121] And at this point in time, they made no offer to the plaintiffs at all. Only an inquiry whether we would consider settlement. And I stressed in this letter, "Please, we're always willing to discuss settlement, we have always been willing to settle. Please get back with us if you want to pursue negotiations."

Next, Mr. Hanni called me, which is confirmed in a letter January 20th of '86. He said, "We might be willing to recommend to State Farm that the Slusher judgment should be settled for $100,000." Not the $200,000 that was owing by then, but a hundred. And the Ospital judgment for $37,000, which was approximately half of what was owing at that time.

But, he said, State Farm had not given him authority to offer it, he would simply recommend it. "And I again reiterate, we are always willing to discuss settlement with you at any time, and would encourage the same. However, you and State Farm should be aware of the general feelings of our group concerning settlement."

And then I describe how the parties are not willing to settle for less than the full judgments, and only upon the payment of full judgments would a satisfaction be given. But that would not be under the [122] circumstance where there was a bad faith claim reserved. And that was made clear for many, many reasons the parties were unwilling to do that.

And then I said, "Look, because of our history with State Farm, please put in writing any offer you wish to make. I want a record of this, because of what can possibly happen," which is now happening in this trial, in light of State Farm's position.

And then I again reiterate, "Nothing in this letter should be interpreted to mean that the parties are not willing to discuss settlement. On the contrary." And then we encourage further negotiations.

After that offer, which rejected half the judgments, then Glenn wrote, on January 31 and said, "Okay, we offer you the

principal amounts of the judgments, not interest or costs, but we want it to be full satisfaction of everything. Not just the judgments."

I responded in a letter, February 12, where I set out in great detail why we could not respond to that, and why we were saying that that could not be settled. I went through a number of explanations, and then finally I said, "If you will pay the full amounts of the judgments we'll give you a satisfaction, but we can't agree to satisfy the bad faith claim."

[123] And then finally, on February 25th, Mr. Hanni writes a letter which, by the way, they are proposing to introduce into evidence, based on their exhibit list, only the last of these series of letters, and there he offers to pay the full amounts of the judgments, but only if the parties will fully settle and satisfy the claims.

Now, there is one part of our letter where we offer to settle the bad faith claim. We agree that should be redacted and excluded, because that now gets into the issues of settling the present claim, as opposed to the prior claim.

But it is grossly unfair for State Farm to stand up here and talk as if they were totally in the right, that they were paying us all along, that there was no need to fear, and that that was the course all along. They did pay it, and what's the big deal about this? When that wasn't the case, and these letters document it. And it's the only way that the plaintiffs now can refute what picture and position that the defendants are taking.

As it relates to the comment about selling the farm, that is in the letter. We intend to elicit sufficient foundation to have that come into evidence through Mr. Fye. If the court determines it should not [124] come in, at that time we have no problem either not publishing that portion of the letter to the jury, or redacting that portion until the court has further evidence.

But we'll be presenting evidence of how Wendell Bennett was acting in his duties, at least as far as the company is concerned, in fulfilling the company's duties to Mr. Campbell, and that that comment was made part of that. And it also justifies

why Campbell suffered injuries, because, unlike what was represented yesterday to the jury, Campbell did not have the impression, nor did Hoggan nor Miles Jensen, that State Farm would ever pay more than the policy limits.

They had just the opposite impression. And they were trying to salvage what they could. And that's background information to explain why Hoggan's letter was written the way it was. Is because he already was told, "State Farm will not pay more, and that Campbell's going to have to pay it."

And without that background, we are seriously prejudiced in this whole affair. They opened the door, they raised it. I was not intending to even touch these issues. But they chose to, and now we are prejudiced if we can't address it.

MR. BELNAP: Your Honor, they can certainly [125] talk about the fact that there's a ruling in this case that, based on the December, 1984 agreement, Campbell had no personal liability on the judgment as of December of 1984. The Hoggan letter simply said, and my argument to the jury was, "We want you to see this through to a conclusion, and if you're not successful in doing that, we want you to pay."

That's what the Hoggan letter said in September of 1983, and that was my argument, that we followed that direction, we took the appeal they directed, we saw it through to a conclusion, and we paid.

They're not hamstrung from putting on whatever evidence they want, be it through Mr. Roberts, who testified at the last trial, and is going to testify in this trial, about appropriate conduct for attorneys. If Mr. Fye wants to testify as an expert, without getting these into evidence that State Farm allegedly violated the Unfair Claims Practices Act, as he did in the last trial, because they offered to settle part of a case to take away another claim, so be it.

But to allow counsel, himself, to put in letters that are his dissertation of his side of the case, when he can simply, through an expert say, if it's probative, "There were offers to settle back and forth," [126] and we have not, nor will we be offering letters that go

to content, and Mr. Hanni writes a letter back saying, "I do not intend to respond at this time to all the matters that are referred to and raised in your letter, but to simply confirm that we made a firm offer to pay an amount that was indicated."

So what's going to be done if this letter's put in, is Mr. Humpherys gets the benefit of, in essence, testifying himself about the value of his case, that he has to get in through witnesses. That's the way evidence comes in. It does not come in through attorneys writing letters between themselves about the value of their case, about the strong points of their case, when, in 1984, the agreement was entered.

So you know, they've got to put their case in through witnesses. If they've got witnesses that can say it, fine. If they don't, that's the way things go. But attorneys can't testify, be it themselves or through correspondence, which is just doing it through the back door, and that's the purpose for Rule 408.

MR. HANNI: Your Honor, could I just say one thing on that score? May I?

THE COURT: Okay.

MR. HANNI: This is settlement discussions between two lawyers. There's no question in this case [127] but what we did not offer or get into settlement discussions in January and February of, until January and February of '86. There's no doubt about that. And there was a lot of exchange between Mr. Humpherys and myself about that.

But if settlement discussions like that can be brought in before a jury, it's going to have a horribly chilling effect on any effort to settle cases in the future. And that's the reason for the rule. Settlement discussions don't come in.

And Mr. Belnap did not say in his opening statement anything about the fact that we were offering to settle this case all the way through. He didn't say that. And that is not part of the record, and we can go back and look at that. He talked about what that letter was that said, "File your motions, do your best to get this

new trial. And if you can't do that, take it up on appeal." But I think it would be grossly unfair if we can put this kind of stuff in.

MR. CHRISTENSEN: Your Honor, I might make a suggestion. This does fit the classic evidence from the Excess Liability Handbook of how, even when they gamble on excess cases, they can beat the other side down. These letters fit that pattern. There's an effort to get them to just take the policy limits, and then [128] there's an effort to pay a little more, and it's a progressive thing.

If the big concern is the letters, we may be able to solve that by having testimony, provided there won't be an objection, saying you don't have any basis for saying this, of simply laying in that, while the impression's been created to the jury that State Farm was doing everything that Campbell and his attorneys wanted, and that was the representation I think made at least five times yesterday during this time frame, that, in truth, State Farm was trying to chisel these people down, and I don't purport to use that word in front of the jury, but they're trying to chisel these people down, "Will you take this small amount? Okay, how about this? How about this? How about this?"

And in the very time frame they claim that they agreed they would pay in full, leading right up to that commitment which they made a very, very big deal of yesterday in opening statement, there were several efforts to get the parties to take less, one, and number two, to force the parties to give up their bad faith claim to get even part of the judgments paid. I think that's very probative.

If we can put it in through an expert, maybe we don't need the letters. You want the letters?

[129] MR. HUMPHERYS: Your Honor, the issue of settlement is the essence of this case. Settlement negotiations are part of this case. Now, not of the bad faith claim, but of the underlying judgments. And this is what those letters go to, except for that which is redacted.

THE COURT: I've had a chance to hear the argument. I heard the argument yesterday. I heard Mr. Humpherys very clearly argue against the arguments that were going to be brought in by counsel. Counsel heard his statement, I listened to it, I felt that the issues of settlement appear to me to be in this case. As to everything but the bad faith case.

And my own perception of the argument that was made by Mr. Belnap is consistent with the arguments that have been made now by Mr. Humpherys, that there's an attempt to portray State Farm in a favorable light through the process of just stepping forward and doing what was asked, without anything more. I believe the door was opened wide.

And the purpose of Rule 408 is not to keep out issues of discussions of settlement when they're, in fact, issues of the case, and they are, indeed. So I'm going to overrule the objection and allow those letters in.

[130] I think there should be a redaction for any settlement of this case, the bad faith case, as suggested by counsel. And obviously, if Bennett's testimony has not been, if there's not been a foundation to establish his agency, which was the issue that was left open on that, then there should be no reference to that.

* * *

[133] * * *

Q (BY MR. HUMPHERYS) Just before the break, Mr. Fye, I was asking you what position State Farm had taken, and you related what Mr. Summers had found and has testified to, and then what State Farm had chosen to do.

I have what's called a claim committee report. This was already, this is already into evidence from the first trial. What I would like to have you do, Mr. Fye, is to explain to the jury what a claim committee report is, and then explain what this is as it relates to the Campbell case.

A A claim committee report is two things. It's what is portrayed and what is the reality. But the portrayal is that it's a meeting of people who are experienced, supervisory level, hopefully, who discuss the pros and cons of an accident, and come to a decision. That's what the good side is.

What it is in reality is a report prepared by the supervisor who's in charge of the file, it frequently does not involve a meeting, and down there where it says those present, or present, the names Brown, Cutler, Stevenson, so forth, frequently there will be no meeting, but it'll simply be circulated, [134] either electronically or by hard copy, to these people. And if they have anything to say they're welcome to say it. If they don't, that's okay, too.

What I'm suggesting is that this claim committee process is highly deceptive, and it becomes a rubber stamp of whatever the plan is.

MR. BELNAP: Your Honor, I'm going to move to strike, for lack of foundation, that conclusion, and beyond the scope of the question.

THE COURT: Just a moment.

MR. HUMPHERYS: Your Honor, I'll just ask another question, we can maybe short circuit the time.

THE COURT: Right, I'm learning how to use my computer.

MR. HUMPHERYS: I haven't learned mine, but we'll learn together.

MR. BELNAP: What about my motion to strike?

THE COURT: Reframe the question and I will --

Q (BY MR. HUMPHERYS) Mr. Fye, have you seen a number of these claim committee reports?

A I have, over the years, many of them.

Q Are they a part of the adjusting process at State Farm?

A Yes.

[135] Q And is it for the purpose of determining whether or not State Farm will pay a claim?

A Ostensibly, yes.

Q And has it been your experience that it is not representative of what it represents to be?

MR. BELNAP: Your Honor -- Excuse me, Mr. Fye. I'd like to object on lack of foundation.

THE COURT: I'm going to sustain that. Lay the foundation, counsel.

Q (BY MR. HUMPHERYS) In the various cases that you have reviewed regarding CLRs and how they are used, have you been able to determine, based upon generally how, whether or not it represents a true picture of liability and payment in a reasonable situation?

A I have. I've investigated that rather extensively. When I saw the first one, I was under the impression that a committee meeting was held and this was the result of an exchange of views and a committee report. And then I learned that that wasn't the case.

And over the next twelve or fourteen years I have yet to see a note taken of an argument that was advanced at a so-called meeting. The testimony of people present has not been able to verify that there was an actual meeting, and I've come to know that the claim committee is the name of the report, not the name [136] of the process. This claim committee report is simply a piece of paper. It doesn't represent a meeting or anything else like that, necessarily.

Q Does it represent State Farm's position on a claim?

A It does that.

Q And does the divisional superintendent dictate, based on your experience with these, the position of State Farm when the case is required to be submitted to him?

A I didn't hear that last part.

Q Does the claim committee report -- Excuse me, does the divisional superintendent, when a claim is submitted to him, make the final determination regarding what State Farm's position will be on the claim?

A Well, he'll make the determination on the portion that gets sent to the committee, but then the bottom line is that there will be a second decision. You see down there in the lower third where it says, "Decision"?

Q Yes. Okay. Generally speaking is this what is typically prepared by the adjuster and then submitted upline?

A It technically is supposed to be prepared by the superintendent in charge of the adjuster, but the [137] adjuster frequently roughs out a rough draft of it for him, yes.

Q Is this the claim report that Mr. Summers said he prepared, and he was ordered to alter it?

A No.

Q There are multiple pages of this, by the way?

A No, it isn't. That's a combined liability report. This is a claim committee report.

Q All right. Let's get our bearings, here. What's the date of this report?

A It says --

Q At least as the decision, 9-9-81?

A Yes.

Q All right, that's only what, two or three months after the accident?

A Right. Four. Three and a half months, right. Excuse me, I need to look at this.

Q Okay, I understand. This is not terribly large. In fact, if anyone has eyes like me they're going to need to get up close to see it. This is very early on, even before the lawsuit is in full process?

A Yes.

Q Would you please read what the result is of the claim committee review?

A "After a careful review of the entire facts, [138] the committee feels that the insured driver's actions were not a proximate cause of this accident. We should defend any action brought against our insured."

Q Now, "our insured" is who?

A Mr. Campbell.

Q All right. And what does it mean that, "After a careful review"? Have you looked at the combined liability report?

A I have.

Q Does it fairly and accurately represent the adverse testimony that we just went through?

A It really doesn't. This statement right there is a misrepresentation.

Q "After careful review"? Did you see any evidence in the file that this committee made a careful review of all of the evidence in this case?

A Well, number one, all of the evidence was not collected. A lot of the evidence was not even available to them to review. And then there's no evidence of a careful review. A careful review wouldn't have led to this decision.

Q Now, up above, in these boxes, advisory and final, what does it, mean based on your experience, that that check in the final box means?

A Well, it means that the course of action has [139] been chosen and that's the committee's position at that point, as opposed to just giving advice on further procedure.

Q And if that were the final decision at this early in the game, did you see any evidence in the file that State Farm ever reconsidered this prior to the verdict?

A No. The record followed the Excess Liability Handbook thoroughly, and that is that it portrayed a consistent picture of what the company had decided, and what they were intending to do.

Q Now, just so we have the names, who is Bill Brown, whose name is listed there just before the decision?

A Bill Brown is the man that Mr. Summers says ordered him to change the report.

Q Is he the man that would be in charge of this file in Utah?

A Right, divisional superintendent, right.

Q Okay. So he would have been over all the claims in that area of Utah; is that correct?

A Well, for this, for the auto claims, yes, a claim like this, right.

Q All right.

A He was the second level of supervision. Bob [140] Noxon was the first level supervisor, and then Mr. Brown was over him.

Q All right, thank you very much. Mr. Fye, given all that you have seen from the file, the evidence regarding the accident, in your opinion, could a reasonable adjuster make an innocent mistake in deciding that there was no liability on Mr. Campbell, and State Farm should defend?

A There wasn't anything innocent about this, no.

* * *

[153] * * *

Q All right, now, what I'd like to make sure the jury understands, if I can take the pens, if we have an excess judgment of around $185,000 against Mr. Campbell, which I think there's evidence of -- Is that approximately the right amount?

A Sure, I'll take your word for it. That seems right.

[154] Q And how much insurance was there?

A $50,000.

Q I'd never be a school teacher.

A I could read it.

Q All right, now, that means that if a bond is posted by State Farm for $50,000, what does it mean in terms of what Mr. Campbell's going to have to bond, or place into the court, to satisfy the judgments?

A The balance, $135,000.

Q Now, was there some legal issue about whether State Farm had to post the bond for 50, or for the full 185 if it desired to protect Mr. Campbell?

A I don't understand the first part of that question.

Q Did State Farm think there was a legal issue that needed to be researched, whether it needed to post a bond for 185, or for only 50?

A Yes, and that's what they hired Mr. Bennett to do, or asked Mr. Bennett to do, even though he represented Mr. Campbell, they asked him to give them advice on whether they would have to do this or not.

Q And did he ever indicate or suggest to State Farm that they should be posting a bond for $185,000?

A No, he didn't.

Q Did he suggest that he would only, that State [155] Farm should only post a bond for $50,000?

A Suggested that, but basically kind of equivocated on it.

Q And was he suggesting to Mr. Campbell and his counsel that Mr. Campbell come up with the balance?

A Yes.

Q I'd like to look at some of those letters. First of all, did State Farm finally offer its policy limits of $25,000?

A Yes. At some point.

Q In a letter dated November 23, 1983, a letter in Exhibit 44, Bates stamp number 30239, is that a copy of Mr. Bennett's letter to Mr. Humpherys regarding the offer to pay the $25,000?

A That's November 23rd of '83?

Q Yes. Let me just put it up on the board.

A I show that to Mr. Hoggan.

Q Excuse me, to Mr. Barrett?

A And Mr. Barrett.

Q And then there's one to Mr. Humpherys. I can show you the same one, they're identical. Here's the one to Mr. Humpherys. I guess it's obvious, I guess I should say "me." Now, would you please read the first paragraph, if you can, from that point?

A "I have been authorized to offer you the [156] policy limits under the Campbell policy, namely $25,000, which can be paid on an immediate basis, to satisfy the judgment that you were

awarded by the jury in this case. If your client agrees to accept the policy limits of $25,000 in full, final, and complete satisfaction of any and all claims against Curtis Campbell, the amounts will be paid over on an immediate basis, and Curtis Campbell will waive any rights on appeal he has from the district court judgment.

"If, on the other hand, the offer is not accepted, the judgment of the district court will be appealed to the Supreme Court of Utah for that tribunal's consideration of several legal issues that we feel the court erred on during the trial."

Q To your knowledge, Mr. Fye, was this the first time that State Farm offered any amount on the claims of Mr. Slusher and Mr. Ospital?

A To my knowledge, yes.

Q And at this point in time, there was either a judgment about to be in place, or was in place, for many times that amount, correct?

A Well --

Q I guess I should say, if considering both judgments?

A Both judgments, yes. This was for the [157] Ospital claim, which was at least twice this limit.

Q So in November, a couple of months after the trial, they're offering $50,000, and they're, Ospital and Slusher, to give up $135,000 of their judgment; is that correct?

A Correct.

Q And what was the response of Mr. Ospital, or the Ospitals?

A Well, it wasn't accepted.

Q Did they then request that State Farm pay the full judgments?

A Yes. On November 30th the Ospitals offered to settle for the entire judgment.

Q And they would be satisfied and go away and have no further involvement, or were they still thinking about pursuing any additional claims?

A That would terminate the Ospitals' claims entirely, as I understand the offer.

Q Did State Farm even reply to this letter?

A I don't remember seeing a reply.

Q Now, I would like to put up a letter, dated December 3, 1983 --

MR. HUMPHERYS: And Your Honor, because the Exhibit 44 has not been completely solidified, and counsel has not yet addressed a stipulation, ... [158] addressing only those correspondence which I don't believe there would be any objection to. And if you'd let me know if there's any of these letters that you object to. But they're all part of the record.

So until we finalize that Exhibit 44, we'll just refer to pages, and that I understand there will be no dispute over.

THE COURT: Okay.

Q (BY MR. HUMPHERYS) Drawing your attention now to a letter dated December 3, 1983, Jerry Stevenson -- Tell me where Jerry Stevenson fits into this picture.

A Jerry Stevenson took over supervision of this matter from, I believe Noxon.

Q And he's writing Wendell Bennett?

A Right.

Q Would you please just read the last sentence, here? Starting with, "After."

A "After your discussion with them, please forward to us your recommendation in the handling of the supersedeas bond."

Q So is State Farm here requesting Mr. Bennett give them recommendations regarding the supersedeas bond?

A That's right.

[159] Q Is it proper for a company to ask defense counsel to represent its interests regarding a matter which may be in conflict with its insured?

A It isn't proper, because it places Mr. Bennett in an untenable position, where there's a clear conflict of interest.

Q Did he respond and proceed, despite that conflict of interest?

A He did.

Q Did Mr. Hoggan -- Well, first of all, who did Mr. Hoggan represent?

A Mr. Hoggan, Brent Hoggan was the Campbells' attorney after the verdict in Logan, Miles Jensen and Brent Hoggan.

Q Before we get into any detail with them, I want to point out what was going on with State Farm. You heard Mr. Belnap represent yesterday, did you not, that they were just following the directions of Mr. Hoggan?

A Right.

Q Would you please, now, read -- Well, let's back up. This is a letter dated December 6th, 1983, correct?

A Correct.

Q From Brent Hoggan to Wendell Bennett, who was [160] the attorney for State Farm?

A That's correct.

Q Now, would you start right here where it says, "Formal demand," and read the rest of the letter?

A "Formal demand is hereby made that, as State Farm pursues the appeal process, State Farm also post a supersedeas bond in the matter so as to protect Mr. Campbell's assets and position in the case."

Q Now, let me stop you there. Would posting a bond for $50,000 protect Mr. Campbell?

A In part. Only to the extent of that $50,000. It would not protect him for the excess amount.

Q So if State Farm took the position of only posting a $50,000 bond, would they be fulfilling this demand by Mr. Hoggan?

A Absolutely not. They'd be substantially keeping Mr. Campbell at risk.

Q Would you continue on with the next paragraph.

A "We feel there is no doubt under the circumstances that there is substantial exposure on the part of State Farm because of the handling of this matter, and furthermore, if the sheriff were to execute upon assets of Mr. Campbell, we believe this would simply further evidence the bad faith of State Farm.

[161] "If execution on assets occurred, we would then be forced to make demand for substantial punitive damages. We have also been contacted by Scott Barrett, and he indicates that they plan on taking action, parentheses, execution, close parentheses, unless there is some assurance very shortly that if an appeal is taken, a bond will be posted for the full amount."

Q What was State Farm's response to this demand?

A They did not want to post the bond for the full amount.

Q Did they ever indicate they would do so?

A No, I don't think so. State Farm's response also was that Campbells should make a deal to eliminate their liability.

Q Let me have you look at a letter from Mr. Humpherys to Wendell Bennett dated December 7th. Would you please read that into the record.

A "Dear Wendell: Inasmuch as State Farm has not offered the amount of the judgment pursuant to Ospitals' demand, we hereby make demand and request that State Farm pay at least the $25,000 toward the judgment, with the clear understanding that such does not satisfy the judgment. Clearly, unless a supersedeas bond is posted, the Ospitals are entitled to receive at least [162] the $25,000. Unless such is paid within seven days from the date of this letter, we will commence garnishment proceedings against State Farm."

Q Did State Farm ever offer to pay those $25,000 without asking Ospitals to give up the rest of the judgment?

A No.

Q Now, there are some letters in here from Wendell Bennett to Jerry Stevenson. I draw your attention first to the letter of December 9, '83.

A Okay.

Q Turn to page 3 of that letter. Excuse me, page 4. Page 4, Jerry Stevenson, December 9, 1983. Would you please read the last paragraph.

A "What I have suggested to Brent Hoggan, who is representing Curtis Campbell personally, is that he either make some type of an arrangement with Slusher and Ospital that will protect Curtis Campbell, and make a complete disclosure of that to us, or that he have Curtis Campbell agree to become a principal on a supersedeas bond for the amount equal to the judgment over the policy limits. I have -- "

Q Just to interrupt you, then that would be for the approximate $135,000 they wanted Campbell to become liable for?

[163] A Correct.

Q Proceed.

A "I have advised him that State Farm has not made a definite decision as to whether or not they will put up the supersedeas bond for the entire amount of the judgment. However, based upon the New York case, that I felt there was case precedent to the effect that all that was required of State Farm under the insuring contract with Campbell was that they put up the supersedeas bond in an amount equal to that part of the judgment that there is insurance coverage for."

Q Now, is that advice by Mr. Bennett contrary to the best interests of Mr. Campbell?

A Absolutely. Mr. Campbell's, the best thing for Mr. Campbell, in view of the fact that this is now way beyond what ever should have happened to this case, is to have complete protection from the consequences of all these actions.

Q Turn to page 5 of this letter, please. I draw your attention now to the middle paragraph, starting off, "We may." "We may consider." By the way, does Mr. Bennett use the word "we," throughout these letters?

A He does.

Q And in the context of these letters, as far [164] as you understand them, who does he mean by "we"?

A He does not mean Bennett and Campbell. He means Bennett and State Farm.

Q He's referring to "we," meaning --

A The company.

Q The company. All right. And now would you start there and please read.

A "We may consider proceeding with the appeal without a supersedeas bond, which would mean that in a garnishment action, that would surely be filed, we would end up paying the amounts due as of the date the funds were paid over to Slusher on the one hand, and Ospital on the other hand, which would include the principle sum of $25,000 each, plus accrued interest and court costs."

Q The next paragraph, please?

A "We will have to make some policy decisions relative to the handling of the case in light of the manner in which Mr. Campbell's attorneys are able to work out an agreement for his personal protection with Mr. Slusher's attorney and Mr. and Mrs. Ospital's attorney."

Q At any time during these letters, have you seen anything that would indicate that Mr. Bennett was attempting to protect Mr. Gampbell by encouraging State Farm to post a bond for the full amount?

[165] A No. And no letter came from his office to State Farm on Campbells' behalf demanding that they do so.

Q Now look at December 19, 1983, the letter, again, from Mr. Bennett to Mr. Jerry Stevenson of State Farm. I'd like to address your attention to the lower paragraph beginning, "I spoke." Would you please read that paragraph.

A "I spoke with Glenn Hanni the afternoon of the 16th concerning the supersedeas bond and the like, and I believe that he and I are pretty basically in agreement as to what has to be

done relative to a supersedeas bond, and both feel that unless Mr. Campbell is able to work some type of an arrangement out with the claimants to limit his personal liability, that we will have to have Mr. Campbell participate in the posting of a supersedeas bond for the whole amount of the judgment, or both be exposed to execution pending appeal.

"The alternative to that would be for State Farm to put up the entire supersedeas bond. However, in order to do that, State Farm would have to guarantee the payment of the full amount of the judgment in the event we did not obtain a reversal on appeal."

Q And then he indicates he's enclosing -- Well, why don't you read the last paragraph.

[166] A Okay. "I'm enclosing herewith a copy of a letter I have written to Brent Hoggan advising him of the appeal, sending him a copy of the appeal papers, and urgently inviting his participation with Mr. Humpherys and Mr. Barrett in resolving Mr. Campbell's personal exposure in a way most beneficial to him, or participating in the filing of a supersedeas bond.

Q Now, that is suggesting that he either agree with Slusher and Ospital, or that he get ready to post property and assets as a bond.

A That's the alternative. "Either you make an agreement about the bad faith claim and various elements of the claim between the direct parties involved, or you have to make good the $135,000 balance on the appeal."

Q Now I'd like you to turn to a letter dated December 19, 1983, a letter from Brent Hoggan, excuse me to Brent Hoggan from Wendell Bennett. There's a reference here to Ospital and Slusher. That doesn't come through very clear. Does Mr. Bennett acknowledge to Mr. Hoggan that Ospitals and Slushers were considering executing against his property?

A Well, it says that he had accordingly issued garnishments against State Farm, and was considering issuing execution, that's right. Was considering issuing executions on some of Mr. Campbell's personal [167] property.

Q Now, on the second page of that letter, the first full paragraph, would you read that, please.

A "I would encourage you to do everything possible to afford protection to Mr. Campbell relative to his personal assets, and as I have told you in the past, I have no objection to your trying to work out an arrangement for Mr. Campbell with Mr. Slusher and the Ospitals that will keep Mr. Campbell from any personal exposure on this matter.

"All I want done is to be advised as to what the arrangement is, and to know Mr. Campbell has that protection, so I can then petition the court for some assistance relative to the supersedeas bond. In that regard, I would feel that if Mr. Campbell is able to work out an arrangement with Mr. Slusher and the Ospitals where he faces no personal exposure, that Judge Christofferson might very well be inclined to set the amount of the supersedeas bond to be equal to the amount of the judgment covered by the insurance proceeds, which would be $25,000 per claim, plus interest and court costs which are payable, in addition to the per claim limits."

Q Well, in order for me to ask the next question you need to read the next two paragraphs.

[168] A Okay. "If an arrangement cannot be worked out with the Ospitals and Mr. Slusher, then I would suggest that Mr. Campbell and State Farm work together for the posting of a supersedeas bond wherein State Farm will become the principal on that part of the bond covering their policy limits, the interest on the part of the judgment that the policy limits cover, and the court costs, and that Mr. Campbell become principal on the balance".

Q The balance being approximately $135,000.

A Yes. "I do not know what Mr. Campbell's personal worth is, however, I am generally aware that he owns some real property there in Cache County. However, I do not know the value of that property and his other assets."

Q Is there anywhere in these letters where, instead of forcing Mr. Campbell to reach an agreement with Slusher and Ospital, he is considering having State Farm post supersedeas bond for the full amount?

A No.

Q And if it's not done, is Campbell protected?

A No, he isn't.

Q Based on your experience -- Well, there's another letter, and we'll forego that for the time being in the interest of time.

[169] In cases of excess verdict, is it fairly common to have the plaintiffs in the underlying case reach an agreement with the insured defendant to prosecute a bad faith claim?

A Yes, it is. And this exchange of letters shows why. It's the way these things get worked out typically.

Q And was Mr. Bennett encouraging Mr. Campbell to enter into such an agreement?

A He was.

Q In that process, typically speaking, is it generally understood that the insured, like Mr. Campbell, would end up giving up part of his claim against the insurance company to insure protection of his assets?

A That's correct. It's, in effect, giving up an asset to protect other assets, that's right.

Q And did that eventually happen?

A Yes, it did.

Q Was there a meeting in January of 1984 where the parties got together and discussed possibly working this out?

A Yes. And it took some time to work out, but an arrangement was made ultimately.

Q And when was that agreement effective?

[170] A About a year after that, in December of '84, or something.

Q All right. And in that agreement, did Mr. Campbell have to give up a portion of his claim against State Farm in order to satisfy the pending execution against his personal property?

A Yes. Although part of the agreement during the process, I understand it, was kind of put on hold.

Q And in turn for doing that, did Mr. Campbell agree that he would have to sue State Farm to protect his personal assets?

A Yes.

Q And did he have to retain counsel that would be willing to represent him in that matter?

A Correct.

Q In your experience, with attorneys who represent plaintiffs, is it common knowledge in the insurance industry that they charge on a contingency fee of a third to 50 percent?

A Yes. These cases are very difficult, complicated --

MR. BELNAP: Your Honor, that goes beyond the scope of the question.

MR. HUMPHERYS: I'll ask a followup question.

THE COURT: Sustained.

[171] Q (BY MR. HUMPHERYS) Mr. Fye, what is your understanding why there are contingency fee agreements?

MR. BELNAP: Your Honor, I'm going to move to strike, or excuse me, to object on the basis of relevancy and lack of foundation for this witness, and it also calls for a matter that this court has taken the prerogative on in terms of that issue.

MR. HUMPHERYS: Counsel for State Farm in his opening statement suggested that the only one that was really benefiting were the lawyers. He opened the door, we're entitled to go into it.

THE COURT: All right, overruled, but let's not go into it very far.

Q (BY MR. HUMPHERYS) Go ahead and give us your understanding of why there are charges of between a third and 50 percent in cases such as this.

MR. BELNAP: May I have a continuing objection on foundation from this witness, Your Honor?

THE COURT: You may.

THE WITNESS: In claims work, claims people know that the average person doesn't have any access to courts otherwise.

If you had to pay the entire cost of what it, of going through years and years of litigation, the average person would not have any access to the courts.

[172] MR. BELNAP: Your Honor, this doesn't answer the question. The question -- He's not responding to the question.

MR. HUMPHERYS: I thought he was.

MR. BELNAP: Why do lawyers have a contingency fee?

MR. HUMPHERYS: No, he was answering what claims people understand why there are contingency fees.

THE COURT: Overruled, proceed, you may answer.

THE WITNESS: And so lawyers offer to represent people to share in proceeds on a percentage basis, and their share varies based on the complexity of the type of litigation and the duration of it, and what may be ultimately involved.

Q (BY MR. HUMPHERYS) The fees initially, if there were no appeal, were what? One-third in this agreement?

A I think so.

Q And if there was an appeal involved, it went up to 40 percent?

A Yes, that's the normal situation.

Q Okay. Now, was this reasonably known in the insurance industry, that these types of contingency fees would be used? I'm going back in time, now, twenty, [173] thirty years, was this a common practice that insurance adjusters would know, or insurance companies would know would be the attorneys fee arrangement?

A Yes. It's known in the insurance industry, and I think the public generally knows it, too.

Q Do the attorneys get paid, on a contingency fee basis, until there is actually a recovery?

A They don't.

Q No matter how long it takes?

A That's correct.

Q That was back in 1984?

A Right.

Q All right, now, I'd like to address another area that Mr. Belnap raised yesterday in his opening statements. He stated that State Farm was doing -- Do you recall Mr. Belnap representing in opening statements that State Farm was simply doing what Mr. Hoggan asked him to do?

A Yes, I do.

Q Now, you said a little laugh, there. Why were you laughing?

A I thought that it was an attempt to portray this claim as being somewhat normal, and this is --

MR. BELNAP: Your Honor, that's irrelevant why he's laughing.

[174] MR. HUMPHERYS: All right, I'll just go on, Your Honor. I want to move along.

Q (BY MR. HUMPHERYS) Have you read that entire letter from Mr. Hoggan to Mr. Bennett?

A I think so.

Q And that's dated September 29, 1983? Let me put that on the board and let's read the flavor of it. First of all, Mr. Fye, should there have been even a need to address these, any of these issues?

A Absolutely not. This case should have been settled and dispatched when Mr. Barrett appeared for the Slushers, Mr. Humpherys appeared, these cases should have been settled, and none of this was necessary. All of this is what I call abnormal and wrongful claims handling. We're way past normal here.

MR. BELNAP: Your Honor, I'm going to move to strike that question, as we submitted a brief to Your Honor as improper testimony from an expert, beyond the scope of proper expert opinions in this state pursuant to the trial brief we submitted to you.

THE COURT: I read the brief. It doesn't play, in my mind. Overruled.

Q (BY MR. HUMPHERYS) All right, now, Mr. Fye, let's read this letter to Mr. Hoggan. First of all, let's set this in context. It's dated September 29, [175] about a week after the verdict; is that right?

A Yes.

Q And had Mr. Campbell come in with his family members to meet with Mr. Hoggan and Miles Jensen?

A Yes.

Q And what was the purpose for their going in to see Mr. Hoggan and Jensen?

A Just a minute, I'm a little confused about that meeting, and what date that took place on.

Q I'm not asking you about the meeting, I'm just saying the purpose was the purpose of Campbell going in to see new attorneys --

A The Campbells realized that they had some substantial risk because of the excess amount of the verdict.

Q All right. And this is the first communication from Mr. Campbell's personal attorneys to Wendell Bennett; is that correct?

A I think that's the first letter, yes.

Q All right. Now, let's read that together to see what, if what Mr. Belnap represented in his opening statement is accurate. Would you please begin from the top, and let's read it.

A "Dear Wendell: We have been retained as counsel for Curtis Campbell in the above-captioned [176] matter. He has made us aware of a judgment which has been entered against him for the sum of $250,000 on behalf of the plaintiff and cross defendant in the above-captioned matter. We are advised that you handled the defense on his behalf, as well as on behalf of the insurance company, State Farm.

"Based upon the facts of this case, it is our opinion that there has been a breach of fiduciary duty on the part of your client, State Farm Insurance Company, to its insured, Curtis

Campbell, in deliberately and intentionally refusing to settle these cases within the policy limits, when clearly both parties proposed such offers of settlement.

"State Farm's liability is further pointed out by the fact that State Farm Insurance Company never made, so far as we are aware, any attempt to compromise or settle these claims whatsoever, that from the outset State Farm always took an absolute and firm position that there was no liability or risk of liability on the part of their client, and therefore refused to make an offer of settlement for even $1.

"This letter is to advise State Farm Insurance Company, through you, of the foregoing, and also that our client looks to State Farm Insurance Company for payment of these judgments in full, that [177] Mr. Campbell considers it the duty of State Farm Insurance Company to take all steps which can be taken to set aside the judgment, to attempt to have the matter retried if there are facts and a basis upon which to do so, and further, that it remains the responsibility, now that Mr. Campbell's defense has been undertaken by State Farm, to pursue any avenues of appeal which may reasonably made under the circumstances.

"This duty is not the duty, so far as we can see, of our client, but is the duty of State Farm -- "

Q I suppose you need the second page up?

A " -- Insurance Company, particularly with their refusal and failure to settle a case within liability limits, when such could easily have been done.

"State Farm Insurance Company had a duty to notify or advise Curtis Campbell that there was a significant risk of an adverse decision in the case, which never occurred. The only legal opinion and evaluation appears to have always been that there was absolutely no risk of loss or liability in the matter.

"Based on the facts that have been explained to us, State Farm should have known from the outset that there was a substantial risk of an adverse decision, and risk of loss under the

circumstances. We submit that State Farm did not exercise good faith, and did not take [178] due care so far as their policy holder's interests are concerned.

"If, for any reason, State Farm fails to fully follow through on the matter to its conclusion, and if an ultimate decision is adverse, to pay the same in full, we would look to State Farm Insurance Company, not only for payment in full of the judgment, but for substantial punitive damages. It appears to be clearly that State Farm has gambled a sizable amount of the insured's money in an effort to save a small amount of its own.

"We trust our position is clear, and that you will conduct yourselves accordingly. If you have any questions or comments, please advise."

Q As an insurance person, if you were to receive a letter like this from an insured, would that indicate to you that it was okay not to post a supersedeas bond for the full amount of $185,000 to protect Mr. Campbell?

A I guess that letter to me is, as a claims person, says three things. Number one, pay this claim, get rid of it. Number two, if you pursue an appeal, protect the insured during that time. And then three, if you do appeal --

MR. BELNAP: Your Honor, I'm just going to [179] move to strike this answer. The letter speaks for itself. And for him to comment on it, it's shown to the jury, and he's read it, it speaks for itself.

THE COURT: Overruled.

THE WITNESS: And the third thing is that if you appeal and lose, we expect that you'll pay the full amount at that time, and there will be a claim for punitive damages if you fail in these.

Q (BY MR. HUMPHERYS) All right. Now, when was the approximate first time that State Farm ever offered to pay more than the policy limits, approximately?

A It seems to me that it was in 1986.

Q Prior to that time had State Farm given any indication whatsoever that it would ever pay more than the policy limits?

A No.

Q Mr. Fye, because these letters are not fully prepared as exhibits, because of a need to address legal issues, I'm not going to make exhibits out of these letters. But did you have the occasion to review correspondence between Mr. Humpherys and Strong and Hanni in 1986 regarding the settlement of these judgments?

A I did.

Q Was there any indication from Mr. Humpherys [180] that Ospital, Slusher, and the Campbells were not willing to try and settle this case?

A No, there --

Q Excuse me, settle the underlying judgments?

MR. BELNAP: Your Honor, may the record show, with respect to objections that have previously been made without having to restate those now, as if they were made now?

THE COURT: They may.

MR. BELNAP: Thank you.

Q (BY MR. HUMPHERYS) Go ahead.

A The Ospitals and Slushers were willing to settle the underlying claim.

Q Was that expressed very clearly in these series of letters?

A I believe so.

Q Did State Farm ever state that they would pay those judgments at that time?

A No. Not without including this claim.

Q Was there an initial opening offer by State Farm to pay something on the judgments?

A Yes, but I don't remember what it was.

Q All right. Was it for the full amount of the judgments, or less? Let me have you refer to a letter dated January 20, 1986.

[181] A The settlement discussions really, not an offer, but the settlement discussions were for less than the amount of the judgments.

Q So was State Farm offered, or suggested that they would try -- Let me back up. Did Mr. Hanni indicate that he would try and get State Farm to offer an amount above the limits?

A No, no. Not above the limit. Below the limit.

Q I thought --

A Oh, above the policy limit?

Q Above the policy limit?

A But below the judgment, that's correct.

Q What amounts were they offering to Mr. Ospital and Slusher?

A $137,500.

Q When interest was added on to the judgments, approximately how much would that have been? About half?

A I don't know.

Q Okay. In any event, the $185,000 would be increasing because of interest and costs, correct?

A Oh, yes.

Q And what was the position of the parties regarding that offer? Was it acceptable to them?

[182] MR. BELNAP: Your Honor, I'd like to have a continuing objection that this is not proper province of an expert witness or expert testimony. May I?

THE COURT: You may.

THE WITNESS: Their position was they should receive the amount of the judgment.

Q (BY MR. HUMPHERYS) And did they continue to offer to State Farm that they would satisfy the judgments if State Farm would pay the judgments?

A Yes.

Q Did State Farm make another offer, less than the full amounts of the judgments? Let me refer you to Mr. Hanni's letter dated January 31, 1986.

A No, they didn't respond with an offer.

Q Eventually did State Farm make an offer to pay the full amounts of the judgments, including interest and costs?

A Are you speaking of the 1989 payment that satisfied the judgment?

Q No, I'm referring to a letter by Mr. Hanni dated February 25, 1986.

A They offered to settle for the amount of the judgments, only if this bad faith claim was included in the settlement.

Q Meaning it would be released?

[183] A Right.

Q Now, from an insurance standpoint, is that an appropriate way to try and resolve the underlying judgments?

A It is not.

Q And would you please explain to the jury why that is not a proper way to address it?

A In the insurance world, you can't link two different subjects, and kind of coerce someone to settle one claim by withholding the money, and then saying, "We'll only settle that claim if you'll settle all your claims."

In other words, if you had a damaged car, and they wouldn't pay for your car until you settled your injury claim, too, that would be wrong. Insurance companies don't have the right to do that, and it's been found, and adjusters are taught that that's wrongful behavior.

Q Now, later in a pleading, in the summer of 1986, did they represent to the court that they would pay the full judgments if it were affirmed on appeal?

A Yes, there was an affirmation like that.

Q Was that the first time since 1981 that they agreed to pay the full amounts of those judgments?

A As far as I know it was, yes.

[184] Q And did they do that in 1989?

A They paid the claim in 1989, yes.

Q Now, just a quick item, here, and then we'll be concluded. You've talked about the duty to defend an insured, that it is the obligation of the insurance company. Does that end merely because a Supreme Court has ruled affirming a judgment, or does the duty extend until those judgments are fully extinguished?

A It extends until they're fully extinguished.

Q And as part of that duty, is it the duty of State Farm to address and disclose to the insured what is happening to those judgments?

A Yes.

Q And if they are satisfied, is it their duty to let the insured know that they have paid for them?

A Yes.

* * *

[187] * * *

CROSS EXAMINATION BY MR. BELNAP:

* * *

[193] * * *

Q Okay. Now, Mr. Fye, you certainly would not say, would you, that it's inappropriate to continue to try and settle a case while it's on appeal, would you?

A No. I think the case should have been settled while it was on appeal.

Q And so it is appropriate to continue to try to do that, correct? Yes or no.

A Yes.

Q Thank you. Now, there was an agreement that was not shown to the jury on the overhead projection, that there would be no bond necessary to be filed. Are you aware of that?

A Yes, I remember that the bond issue passed into non-importance.

Q Okay. Do you recall that that occurred in May of 1984?

A I don't, but that time sounds about right.

[194] Q All right. Now, are you aware, Mr. Fye, that under the law of Utah, that an action, if State Farm was going to be sued for alleged breach of the insuring agreement of good faith, that that action would have to be brought in the name of Mr. Campbell, and Mrs. Campbell, if appropriate? Rather than in the name of the people that got the judgment?

A Yeah.

Q And so to be able to proceed with an action, Mr. Campbell would have to be --

A He'd have to be the plaintiff, right.

Q He would have to be the plaintiff, would he not?

A Correct.

Q And if there was an execution, or a sale of his property, then there would not be the ability for him to bring -- Let me rephrase that. If there was a sale of his property, and the judgments were satisfied, then Slusher and Ospital would not have a basis to share in the proceeds; is that correct?

A Sure. If the Campbells had liquidated everything, and together with State Farm settled the cases, it would be a done situation.

Q Now, you heard yesterday, did you not, Mr. Fye, that there was an agreement entered into on the [195] 3rd of June, 1983?

A Yes.

Q Are you aware of this agreement? Have you seen it before?

A Well, 3rd day of June, yes.

Q Have you seen that agreement before?

A Well, let me look at it. Is there a second page to it?

Q Yes.

A Yeah, I think I've seen that.

Q And this agreement, Mr. Fye, is this Mr. Slusher and the estate of Ospital, and Ospital's insurance company, Allstate, that are hereafter referred to as Ospital; is that right?

A Yes.

Q Can you see that okay?

A I can, yes, thank you.

Q Does the agreement go on to provide that Ospital and the attorneys currently retained by Ospital shall assist Slusher in the prosecution of his claim against any other person responsible?

A Yes.

Q And that would be Mr. Campbell in this case, would it not?

A Yes, that's correct.

[196] Q All right. Does it go on to provide that if they're successful in recovering an amount in excess of that determined by the jury, that there would be a split of that, of those proceeds?

A Yes.

Q Now, in order to proceed with an amount to be able to split these proceeds, there would have to be the agreement of Mr. Campbell to file that lawsuit, wouldn't there?

A I guess, if I follow you right.

* * *

[197] * * *

Q In order for Slusher and Ospital to share in [198] any recovery against State Farm, they would have to have Campbell file the action and have his cooperation, correct?

A Yes.

Q And we've agreed, Mr. Fye, that, at least by May of 1984, there was an agreement that no bond would be necessary, true, sir?

A I think that's the date that we had when we went through it, yes.

Q And even though the trial took place in September of 1983, a bond is not necessary until an actual judgment has been entered; isn't that true, Mr. Fye?

A That's correct, you can't execute on a verdict. There has to be a judgment before you can execute on someone's property.

Q And are you aware, sir, that the judgments in this case were entered the end of November, the latter part of November?

A Not off the top of my head, but I'll accept your word for it.

Q And so what we're talking about at the extreme ends, is from November, mid-November to May of 1984, there was some exposure, by your statement, at least, for Mr. Campbell and his property; is that true? [199] Without a bond?

A I really have not calculated or paid attention to the length of time that he was exposed to the loss of his property.

Q Right. You would agree that it was from the time of the judgments until the agreement in May of '84. That's the window.

A Yeah, I think so.

Q Now, Mr. Fye, before May of '84, you would agree, would you not, that Mr. Campbell had been advised that there would not be any sale of his property while discussions were taking place; is that correct, sir?

A Well, let me read it.

Q Okay. Can I help you point out, here, please?

A Sure can.

Q Okay. "Nevertheless, we would not" -- excuse me -- "would not commence any collection action against Mr. Campbell personally until we've had the opportunity to review the possible assignment of his cause of action against State Farm." That's what it says?

A That's what it says, in December of '83.

Q And this is less than a month after the judgments were entered; is that true, sir?

A Yes, it seems to be.

[200] Q That letter is from the attorney for Mr. Slusher, was it not, Mr. Fye?

A Yes, Mr. Barrett.

Q Okay. Then on March 13th, 1984, have you seen this letter? May I point out --

A Yeah, I think so.

Q Okay. "As you know, we have made no attempt to collect the existing judgment against Mr. Campbell, and although no supersedeas bond has been filed, we have more or less decided that since the judgment bears interest at 12 percent, we will not pursue any garnishment against State Farm for the policy limits pending the appeal."

Have I read that correctly?

A No, you didn't read it correctly. You put an "and" before "although." It reads a little bit differently, but you've read it mostly correctly.

Q Okay. The substance, Mr. Fye, is that there has been an agreement that a bond will not be sought, and that this indicates that they'll sit on the judgments and let them collect interest; is that correct?

A Yes. They, meaning Slusher.

Q And in the next paragraph, "Mr. Humpherys and myself have been in contact," to discuss what they were [201] talking about; isn't that true?

A Yes.

Q Now, in reviewing the file, are you aware of whether or not Mr. Campbell was made aware of these letters right after the judgments were entered, indicating that they would not move ahead to sell any of his property while they were discussing these matters?

A Not as I sit here.

MR. BELNAP: May I approach the witness, Your Honor?

THE COURT: You may.

Q (BY MR. BELNAP) We showed the jury the letter of December 23rd, did we not, Mr. Fye?

A Yes.

Q If I could just stand by you, here, for a moment.

A Okay.

Q I want to show you a letter that's dated December 28th, and I'll read it, if you can follow with me.

MR. HANNI: What year?

MR. BELNAP: Thank you, Mr. Hanni.

Q (BY MR. BELNAP) December 28th, 1983, from Olsen and Hoggan to Mr. Campbell; is that correct?

A Yes, it is.

[202] Q "Enclosed is a copy of the letter we have recently received from Scott Barrett's partner." That would be Mr. Brady, would it not, on the December 23rd letter?

A Uh-huh.

Q "If you have any questions in the meantime, please let me know. Brent and I would also like to meet with you on Wednesday, January 4th, to prepare for the January 6th meeting with Mr. Barrett. If this time is inconvenient, please let me know."

That indicates that that was sent to Mr. Campbell, was it not, this December letter?

A Does it refer to it by date?

Q It does not. But that is the only letter --

A And that's the 23rd?

Q It is?

A That would seem to be, yes. That's reasonable.

Q Now, you're aware, Mr. Fye, that when it's referred to that there's a January 6th meeting of 1984, that that was a meeting where it was discussed with Mr. Barrett, Mr. Humpherys, and Mr. Campbell's attorneys, that they would not execute on his property while they attempted to work out an agreement.

A Yes, that's the beginnings of the deal that [203] Mr. Bennett was suggesting that they get into.

Q Okay. Are you aware if Mr. Campbell, after that meeting, was sent this March 13th letter, indicating that there would be no effort, no attempt to collect, and no bond needed?

A Yes, I'm aware that they carved out provisional agreements, and then over the next year refined them.

Q So you admit this March 13th, '84 letter was sent to Mr. Campbell confirming that; is that right, sir?

A Well, that letter was sent to Miles Jensen.

Q But a copy of this was sent to Mr. Campbell. Do you dispute that?

A I don't. I don't know that, but if you say it happened, fine.

Q Well, I can show you, but I'd like to move on.

A Move on. I think that's okay.

Q All right. Are you aware that after the agreement that no bond would be necessary, that Mr. Campbell received a draft of a proposed agreement indicating he would have no personal liability on the judgments, and that draft was sent to him in May of '84, as well?

[204] A There's too much in that question. I didn't follow it all.

Q Let me try and restate it.

A Okay.

Q Are you aware, Mr. Fye, that in '84, the same month when it was agreed that no bond would be necessary, that a draft of the agreement was sent to Mr. Campbell indicating he would have no personal liability on the judgments?

A I don't remember that specifically, but that would make sense.

* * *

[205] * * *

Q Okay. In this particular case, Mr. Fye, [206] State Farm paid out substantial dollars in excess of $20,000 in defending Mr. Campbell just up through the trial, did they not?

A Yes, they paid out money for defense.

Q And they paid out $314,287 to pay the judgments, did they not?

A I'll take your word for the amount. That sounds right.

Q Okay. And part of that payment included the policy limits that were under the policy; isn't that true?

A That were owed from the beginning, yes, that's right.

Q Mr. Fye, I'm going to show you two documents that the clerk is going to mark as Defendant's Exhibits 66 and 67, and I'll represent to you, Mr. Fye, that Exhibit 66-D --

MR. BELNAP: May I approach the witness, Your Honor?

THE COURT: You may.

Q (BY MR. BELNAP) Have you ever seen Exhibit 66-D?

A Yes.

Q Have you ever seen Exhibit 67-D?

A Yes.

[207] Q Exhibit 67-D is dated when, Mr. Fye?

A February 8th, 1979.

Q Could you turn to the last page of that document and tell the jury whose name is on it?

A Richard Aaberg, or R. E. Aaberg, vice president of claims.

Q And Mr. Fye, who was Mr. Aaberg vice president of claims for in 1979?

A State Farm Fire and Casualty. The fire company.

Q Okay. And is that the same person whose name is on Exhibit Number 21?

A Yes.

Q What you have called the Excess Liability Manual?

A It's right here. Yes, it is.

Q Mr. Fye, have you ever heard of this document being referred to by the fire company as a, quote, "red book" end of quote?

A This one?

Q No, the Excess Liability Manual as one of the red books.

A If I have, I don't remember it right now.

Q Okay. It is called "General Claims Studies And Recommendations Number 3, Excess Liability [208] Handbook," is it not?

A Yes, it is.

Q Could you please turn with me, Mr. Fye, in Exhibit 67-D, to the second-to-the-last page.

A I'm there.

Q Does the document refer to general claims studies and recommendations under Roman Numeral V?

A Yes.

Q Does it indicate, "The following general claims studies and recommendations are obsolete, and should be discarded"?

A Yes, it does.

Q And is one of those that's listed number 3, the Excess Liability Handbook?

A Yes.

MR. BELNAP: I'd move for the admission of 67-D, Your Honor.

THE COURT: Any objection?

MR. HUMPHERYS: Yes. We don't know the validity of these, and when they were prepared. We object on authentication.

MR. BELNAP: Your Honor, if there's going to be an objection on that, we have a witness, either in person or by deposition, that authenticated both of these documents, and I would ask that they be admitted [209] subject to tying them up.

THE COURT: All right, they'll be admitted on that basis.

(WHEREUPON Exhibit Number 67 was received into evidence.)

Q (BY MR. BELNAP) Exhibit 67-D is dated February 8th, 1979, is that correct, Mr. Fye?

A Are you reading the date? I'm not going to dispute you if you're reading it.

Q And Mr. Fye, Exhibit 66-D indicates that the Excess Liability Handbook was made obsolete in February of 1979, does it not?

A I could read that first paragraph if you'd like.

Q Well, let me point to you, if I could --

A I know what you're talking about.

Q Does it say right here, Mr. Fye, "obsolete February 8th, 1979, Excess Liability Handbook"?

A Okay, I see. I thought you were referring to the first paragraph.

Q No, I'm referring right here.

A Yes.

Q Does it say that?

A Yes, it does.

Q Thank you.

[210] A You're welcome.

MR. BELNAP: I'd move for the admission of 66-D on the same basis, Your Honor.

MR. HUMPHERYS: We have the same objection. We don't have foundation from the person who wrote it, and we don't know if it's authentic.

THE COURT: It'll be admitted subject to later establishing that issue.

(WHEREUPON Exhibit Number 66 was received into evidence.)

Q (BY MR. BELNAP) Mr. Fye, you've indicated to this jury that you've read a lot of documents involving both State Farm Auto and State Farm Fire; is that correct?

A Yes, and that's correct, I have.

Q Mr. Fye, the documents that you have referred to that make up part of this Excess Liability Manual are --

MR. BELNAP: Can I stand here for a moment, Your Honor?

THE COURT: You may.

Q (BY MR. BELNAP) Are what's known as operation guides, are they not?

A Yes.

Q And an operation guide --

[211] A Now, not all of them are, but there are some.

Q I understand. I said "that make up part." Okay?

A Okay.

Q An operation guide is a fire company document, is it not?

A Yes, it is.

Q And it has the name in this manual, State Farm Fire and Casualty Operation Guide; is that correct?

A Correct.

Q And the date is November 6, 1970; is that right?

A That's correct.

Q Now, Mr. Fye, you would agree, would you not, that if these operation guides had been made obsolete in 1979, by Exhibit 67, that they would no longer be part of the company's documents on claims; is that right, of State Farm Fire's claims documents, correct?

A No, they would not be an official document. There is no guard against the possibility that copies of that manual were retained and survived through that period. But as far as the company's official list of documents where you could write in to central supply and get copies of it, you're correct.

Q All right. And they would -- There would be [212] no guard that they still wouldn't be left around, unless people would have discarded them because they were obsolete; is that correct, Mr. Fye?

A Well, adjusters don't discard things because they're obsolete if they have information that describes the way the

company handles claims. If claim practices get into dispute, most adjusters want to have evidence of the systems under which they handled the claims. So it's very difficult to get an adjuster to destroy a manual.

Q Okay. Doesn't Exhibit 67-D say, quote, "The following general claims studies and recommendations are obsolete and should be discarded."

A That's what it says.

Q And it was addressed to regional vice presidents, was it not?

A It was.

Q Okay. And you can't, you don't have the ability, you were not working for State Farm in 1979, obviously, were you?

A Obviously not.

Q Okay. Mr. Fye, do you think it would be evidence that the Excess Liability Manual that you've referred this jury to was obsolete, if another manual came out to replace that at a later time?

[213] A Is that further evidence that it was an intent to obsolete the manual?

Q Yes.

A Yeah, sure.

Q Okay. And has that happened?

A Evidence of intent, yeah.

Q Has that happened, Mr. Fye?

A Yes, there are a lot of other manuals.

Q Okay. But has -- This is called, if you look at the operation guides in here, Excess Liability Procedure, is it not?

A Yes. Those pages are, yes.

Q Okay. And if another manual was produced by the fire company on excess liability procedure, would you agree that that would be evidence of the intent that that was to be obsoleted?

A Yes, it would be evidence of that.

Q Okay. And has that happened?

A Well, that's what I've tried to explain. Maybe you didn't hear my testimony. I don't think the principles have been deleted. I don't think they've been obsoleted.

Q All right.

A I think that basically this claim is evidence that whatever these memos were that went out saying, [214] "Obsolete this manual," didn't work. And I found that, in my practical experience with insurance companies, that it's like a large ship. You can throw the rudder --

MR. BELNAP: Your Honor, excuse me.

THE COURT: Let him finish.

MR. BELNAP: He's not answering my question.

THE COURT: I think he is, counsel.

THE WITNESS: You can throw the rudder hard to one side, and it may take some time before the bow starts swinging around. A large insurance company is the same way. Writing to the vice presidents is not writing to the people out there where the rubber meets the road, where these manuals exist, and where these practices have been taught for years and years and years. It's not that easy to make people give up the way they know how to do business.

Q (BY MR. BELNAP) Mr. Fye, I'm going to show you a document, if I could approach, again.

THE COURT: You may.

Q (BY MR. BELNAP) And ask you if you can identify whether or not that's an operation guide.

A It is.

Q Have you ever seen that before?

A Not this copy, but I'm sure I've seen one of [215] the editions around this time.

Q Okay. What does that indicate that the subject of this operation guide is?

A Excess liability procedure, and it replaces the one from November of '81.

Q Okay. And its date is October of '85.

A It is.

Q All right. And it indicates that the November of '81 is replaced by this operation guide, the changes are editorial only, and vertical lines in the right margin have been omitted. Is that what it says?

A That's what it says.

Q Now, to you, Mr. Fye, would you agree that that's evidence that, as of November of '81, Exhibit 21, the Excess Liability Manual, was not the excess liability procedure being printed by State Farm Fire?

A Being printed by.

Q That is correct.

A That's correct.

Q Thank you.

A You're welcome.

Q And your testimony here today about the rudder of the ship, assuming that a regional vice president has not disseminated information down through the divisional claims superintendents and the claims [216] superintendents, and into the field; is that correct?

A Yes, it assumes that it's a slow process, and it's not always a thorough process. Evidenced by the fact that this memo first went out in 1979, and about seven years later the first one hadn't worked, so they had to send out another one. And now the question is, "Did the second one work?" And I'm saying probably not.

Q Mr. Fye, the second memo ends up obsoleting the rest of the general claims studies 4, 5, 6, 7, 8, 9, and 12. Does it not?

A Yes, there's a list of materials, including this manual.

Q Thank you. Including the manual referenced that it was obsolete in 1979, correct?

A Correct.

Q Now, Mr. Fye, you've indicated to this jury that you've reviewed all of the materials and depositions in this case, haven't you?

A Yes, I've been furnished a lot of material, and I've looked at it diligently.

Q You would agree with me, would you not, Mr. Fye, that all of the people involved with this claim had never seen the Excess Liability Manual, correct?

A That they had never seen it?

Q That's correct.

[217] A Or that that's what their testimony was?

Q Their testimony was that they had never seen this manual.

A I'll agree with that, that that's what their testimony was.

Q And that even includes Ray Summers.

A Up to a point it does, yes.

Q Okay. That includes people that the plaintiffs will be calling as former employees to testify on their behalf in this case; isn't that true?

A That you're going to be calling?

Q No, that the plaintiff will be calling as former employees, have not seen this manual.

A It's possibly true. I don't know who you're talking about.

Q Samantha Bird, for instance?

A Yes.

Q You agree she had never used this manual and seen it?

A Used it, I'm not sure. Seen it, I don't think she had.

Q Okay. The only person in the state of Utah that has testified that he has seen this manual related to State Farm here in Utah between 1981 when the accident happened and 1986 was John Crowe; isn't that [218] correct?

A I think so. And we're distinguishing seeing it, versus using it.

Q That's what my question was, Mr. Fye.

A And we're only talking about seeing it, and not using it.

Q That is correct. Seeing it and reading it. Let's put it that way.

A Okay.

Q The only person that claims to have seen it and read it between the time of the accident and 1986 was Mr. Crowe; is that correct?

A I think that's correct.

Q And Mr. Crowe worked for the fire company in Virginia, did he not?

A He did.

Q And he was transferred to Utah in 1986 with the fire company; is that correct?

A That sounds correct.

Q And brought this manual to Utah with him.

A Right.

Q As part of the copies of documents that he decided to keep, for whatever reason.

A Right. He had a couple of manuals like this.

Q Okay. Are you aware that he has testified [219] that he did not sit down and train any people here in Utah from this manual?

A I don't recall that testimony.

Q Would you dispute that?

A If John said it, no.

* * *

[223] * * *

Q Now, you talked to this jury about the fact that an insurance company owes a fiduciary duty to its insured; is that correct?

A Yes, I did.

Q And that duty has the responsibility to give equal weight to the insured's interest as it would to its own; isn't that true, Mr. Fye?

A Yes. It's a little bit lighter than the duty of a true fiduciary.

Q And in this case you would agree, Mr. Fye -- [224] Or let me ask you if you would agree. Would you agree that, from the very first instance that a person talked to Mr. Campbell, that he indicated he was not at fault in this accident?

A Yes.

Q And you --

A You mean the State Farm agent?

Q No, I don't mean the State Farm agent. The first person that talked to Mr. Campbell about this accident, do you agree that he indicated he was not at fault?

A I don't remember who that is. You mean at the accident scene?

Q Let's start there.

A I don't know who the first person he talked to was.

Q Okay. Do you believe he talked to the police officers at the accident scene?

A I do.

Q Do you believe he indicated to them, in so many words, that he did not cause this accident?

A I think so.

Q And knowing what you do about what you've seen, do you believe that he earnestly stated that, and believed that, Mr. Fye?

[225] A I do, indeed.

Q Are you aware that he told that same thing to another insurance company before State Farm ever talked to him?

A The Farmers adjuster?

Q Yes.

A Yes.

Q Okay. And did he tell the Farmers adjuster that he was not at fault?

A Yes, essentially.

Q And did he insist on that in his firm belief?

A Insist in what way?

- Q Well, did he state in his firm belief that he had not caused the accident to the Farmers adjuster?

A Those exact words, I don't remember that statement to that extent.

Q Was the content, if we were to look at the statement as a whole, Mr. Fye, was the content that he firmly believed that he was not at fault?

A Yes, that's my reading of the record, was that Mr. Campbell was not a deceptive person. He stated his beliefs very candidly whenever he stated them.

Q And after sitting through the trial of this case, and hearing all of the evidence, he continued to state that he was not at fault, did he not?

[226] A I think so, generally.

Q And has continued to take that position, up to this present day, correct?

A Yes, that's correct.

Q Along with his wife; is that true?

A Yes.

Q And this position has been taken at the same time, and in the face of the allegations made in this case that this jury has heard about up to this point in time; isn't that true?

A Yes, it is.

Q Are you aware whether or not Mr. Campbell sat through the deposition of Mr. Slusher?

A Yes, I am.

Q And did he?

A That's what I heard in the opening statements.

Q Do you dispute that, Mr. Fye?

A I don't.

Q Have you read Mr. Slusher's deposition?

A Yes, I have. And I've read the synopsis of it that Mr. Bennett published.

Q Okay. Do you know if Mrs. Campbell was present at that deposition, Mr. Fye?

A I believe she was.

[227] Q Having read Mr. Slusher's deposition, he testified in the deposition that he had allegedly seen Mr. Campbell pass six vans, correct?

A Yes.

Q He testified that, in his opinion, if Mr. Campbell had not made this passing maneuver, that the accident would not have happened, and the Ospital vehicle would not have crashed; is that correct?

A Correct.

Q And that testimony was made in the face of the testimony of Mr. Gerber that indicated that the vans were spread out to a distance of approximately a mile; is that correct, Mr. Fye?

A That rings a bell.

Q Okay. And you would agree, would you not, Mr. Fye, having reviewed the Slusher deposition, that if a person was to -- Well, let me strike that and ask another question, please.

You have not reason to believe that Mr. Campbell was not a very bright and intelligent person, do you, Mr. Fye?

A No. I think Mr. Campbell exhibited professionally a great level of intelligence by virtue of his occupation and demeanor and so forth.

Q And there's no question, is there, Mr. Fye, [228] that if Mr. Campbell sat through the deposition of Mr. Slusher, he certainly heard a different version of the accident than what he himself believed had happened; isn't that correct?

A In other words, that he either knew or should have known that there was a substantial chance that there was liability against him?

Q That is correct.

A And Campbell should know that, but Bennett shouldn't?

MR. BELNAP: I'd move to strike that, Your Honor, as non-responsive.

THE COURT: Granted.

THE WITNESS: Sorry.

Q (BY MR. BELNAP) Mr. Fye, there's no question that Mr. Campbell would have heard a version of the accident entirely different than what he believed occurred; isn't that true?

A There's no what?

Q There is no question, sitting through Mr. Slusher's deposition, that he would have heard a version of the accident entirely different than what he believed was true.

A That's possible, although deposition testimony, and the intricate nature of questions, are [229] difficult to get down at first sitting. Sometimes I've read depositions four or five times before I've really understood them. But granted, if you hear the version, you do hear it.

Q It's not intricate to hear somebody say, across the table, that, "I saw you pass six vans," is it, Mr. Fye?

A That particular part is not intricate at all, no.

Q Okay. You would agree, would you not, that --

A But there's nothing in that statement alone, of course, that would make Mr. Campbell disagree with it, is there?

Q Mr. Fye, I'm not going to argue with you.

A No, but the point is that --

Q Excuse me, there's not a question pending.

A All right.

Q Mr. Fye, you don't dispute the fact that Mr. Bennett sent, on each of the items of correspondence to Mr. Campbell, when the offers were made to settle this case.

A No, I don't think I dispute that.

Q Okay. And there is no evidence in the file that Mr. Campbell ever demanded that Mr. Bennett, or [230] suggested to Mr. Bennett that the cases be settled; is that correct?

A No. Mr. Campbell did not insist that the case be settled, even though the insurance company would anticipate that that should be done.

Q Okay. Mr. Fye, just one additional area of inquiry, and then we'll have to finish this up on Tuesday.

A All right.

Q You would agree, would you not, Mr. Fye, that another insurance adjuster with a number of years of experience determined from his investigation that the fault for this accident fell with the Ospital vehicle.

A Yes.

Q You've seen the documents filed by Mr. Lithgow of Farmers Insurance, have you not?

A Yes, I believe so.

Q And those documents indicated that in his opinion the fault for this accident would lie with the Ospital vehicle, correct?

A I don't recall exactly what they say, but they certainly implicate Ospital.

Q Don't they go on to state that, in his opinion, from his investigation, that liability would not rest with Mr. Campbell?

[231] A I don't remember that.

Q Would you dispute that, Mr. Fye?

A Well, let me look at it, and I'll review it quickly.

MR. BELNAP: May I approach the witness, Your Honor?

THE COURT: You may.

Q (BY MR. BELNAP) I'm referring to a memo from the file of Farmers Insurance dated July 9th, 1981, the third page, Mr. Fye, that states, "It is felt that the real cause of this accident is the insured's excess speed, and that contribution from Mr. Campbell's insurer is not in order." Have I read that correctly?

A You have.

* * *

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* * *

GARY T. FYE the witness on the stand at the time of adjournment, resumed the stand and was examined and testified further as follows:

DIRECT EXAMINATION BY MR. BELNAP:

Q Mr. Fye, good morning.

A Good morning.

Q Last Friday, among other things, we talked about the Excess Liability Manual. Do you recall that discussion, Mr. Fye?

A Yes.

Q Yes. And Mr. Fye, as I've reviewed your testimony in this case and in other cases, as I understand your opinion, the Article 14 -- Or excuse me, let me put it the other way. The Excess Liability Manual was a predecessor in part to Article 14 of the [4] automobile claims superintendent manual; is that your understanding?

A Yes, they look very similar, and there may be, it may be in the other order. It may be that Article 14 existed before the Excess Liability Handbook, but at least the record that we have now shows that it followed the Excess Liability Handbook.

Q And just to remind ourselves and the jury, the Excess Liability Handbook, as we've talked about it is dated 1972 by Mr. Aaberg; is that correct?

A Yes.

Q And the portions that were put up on the screen, in part, were operation guides from the fire company; is that right?

A Yes.

Q Dated 1970?

A Yes.

Q Okay. Mr. Fye, I'd like to show you what's been marked as Defendant's Exhibit 88-D. The first page of that document, can you identify what that is?

A This is, well, it's either what you call a conveyance memo, or a buck slip, which is basically the memo where an insurance company will send out portions of a manual that are being updated.

Q And this particular page that the exhibit [5] sticker is on, the first page, is entitled claims superintendent manual memo number 72; is that right, Mr. Fye?

A Yes, it is.

Q And it's dated what date, Mr. Fye?

A October 1st, 1981.

Q And does the memo say, "Destroy Article 14 dated March, 1980," Mr. Fye?

A It does.

Q "And replace with the attached revised Article 14 dated October, 1981".

A Yes.

Q Does it go on to say, "Revised language is found on pages 2, 5, 6, and 36 indicated by asterisks"?

A Ultimately. The first thing it says is, "Please destroy Article 14 dated March, 1981," but then it goes on and says that, yes.

Q It says, as we read, "Destroy and replace with the new one," right?

A Yes, uh-huh.

Q And it indicates that the language on the 1980 version that's being changed is found on pages 2, 5, 6, and 36; is that right, sir?

A That's right.

Q Now --

[6] MR. BELNAP: If I could stand here for a moment, Your Honor?

THE COURT: You may, certainly.

Q (BY MR. BELNAP) On page 2, it's hard to see, but there's a mark on the side of the page, but let me take you to page 5, where I think it shows up better. Is there not an asterisk there next to company requirements, sir?

A Yes, there is.

Q Okay. And is there not an asterisk on page 6 next to "work load"?

A Yes, there is.

Q And on page 36, is there an asterisk next to "special fee arrangements"?

A Yes.

MR. BELNAP: I'd move for the admission of 88-D, Your Honor.

MR. HUMPHERYS: We have no objection.

THE COURT: It's received.

(WHEREUPON Exhibit Number 88 was received into evidence.)

Q (BY MR. BELNAP) Mr. Fye, since that 88-D reflects that it was an Article 14 dated March, 1980, and it has shown us by asterisks where the changes were made. You would agree, would you not, sir, that this [7] document, with the exception of those places where there's an asterisk, would have been the document that would have been in existence in March of 1980?

A Yes, the -- When changes are sent out, if it's substantially the same, usually there will be some indication to show those portions that have been marked. Sometimes they'll put a line beside the whole text of the change. Sometimes, like in this case, there's just an asterisk. But basically the change is denoted that way.

Q There's nowhere in this 88-D that indicates it's a fire company document, is there?

A No, this would not be a fire company document, this would be an auto.

Q And 88-D does not have the words "operation guide" anywhere in it, does it, sir?

A That's correct.

Q And Mr. Fye, I'll represent to you that we received a copy of this document from you in the documents that were produced in this case. Do you dispute that?

A No.

Q Okay.

A I don't think you'd have any reason to misrepresent that.

[8] Q Do you see anywhere in this document, Mr. Fye, where it indicates that State Farm Auto should disregard the recommendations of its trial attorney?

A I can remember having read this before, but I don't remember that sort of text in this document. But I assume you don't want me to go back through it.

Q Mr. Fye, when the Excess Liability Handbook that has the page "State Farm Fire and Casualty" has a heading, "Disregard the recommendations of our trial attorney," that's not found in 88-D, would you agree with that, sir?

A Yes. Without a review of it, I would. My recollection is that that's not in there.

Q Okay. Would you agree, sir, that there is nothing in Exhibit 88-D that indicates that the claims superintendent should use self-serving correspondence?

A No, that's correct. This document has been cleaned up of all that language, to my knowledge.

Q Now, Mr. Fye, with respect to the Excess Liability Manual, would you agree that there's nowhere in Exhibit 88-D where it says, similar to the Excess Liability Manual, that estimates as to the amount of verdict should not be in writing.

A That's right, that's been cleaned up, too.

Q Okay. Would you agree that there's nowhere [9] in this document of 1981 where it indicates that the attorney should not give opinions? About the defense?

A Well, no, there's language in here about recommendations, I'm sure.

Q But there's not language saying that he or she should not give opinions; isn't that true, Mr. Fye?

A I think that's right, yes.

Q Would you also agree that in Exhibit 88-D, unlike the Excess Liability Manual, that it does not tell anything about not putting in writing opinions as to settlement value?

A That's right.

Q Mr. Fye, would you -- I'd also like to refer you, please, to page 16 of part 5 of the Excess Liability Manual.

A Page 15 of part 5?

Q Yes. Which, I'm referring to Exhibit 21-P. Hang on, here.

A Okay.

Q The bottom of the court copy says "Defendant 2054" in the bottom right-hand corner, Mr. Fye.

A Mine says 2053.

Q All right, I'm at 2054. You may have something numbered differently. The court copy is 2054?

A Let's use that.

[10] Q Okay. Mr. Fye, would you agree with me that, starting with the word "negotiation," continuing down through the rest of that page and the next page, and the next page, that those provisions, over through page 18, which is 2056, are not found in Exhibit 88-D.

A I think that's right. These negotiations things have not been transferred to that.

Q Thank you. Mr. Fye, you've obviously had an opportunity to speak to Mr. Humpherys and Mr. Christensen in preparation for your testimony here, have you not, sir?

A I have.

Q Are you aware that Mr. Humpherys has met with Mr. Aaberg, whose name is on Exhibit 21-P?

A Yes.

Q And that that meeting has taken place within the last month to six weeks, approximately?

A Yes.

Q Now, you've indicated to this jury that you have reviewed prior testimony of Mr. Aaberg, whose name is on Exhibit 21-P, general studies and recommendations, have you not?

A I don't know whether I mentioned him by name, but he was one of the officers I would have been referring to. I've reviewed his affidavits and [11] deposition testimony in other cases. I've never spoken to him personally.

Q You're aware, are you not, Mr. Fye, that Mr. Aaberg has testified that State Farm Fire and Casualty and State Farm Mutual Automobile Insurance Company have two separate claim departments; is that correct?

A Yes.

Q That are in two separate buildings, correct?

A Yes.

Q That they have their own training schools; is that correct?

A Yes.

Q And are you aware that he testified that these manuals, these general studies and recommendation manuals, were obsoleted sometime prior to 1980?

A Well, yes, he testified both ways, that he also obsoleted them in 1986, too.

Q The remainder of them. But he has specifically testified that that document was obsoleted sometime before 1980, has he not, sir?

A Yes, that's true. But he testified also that he included this manual in the later memo, it's an exhibit, here, that we made Friday, I believe.

* * *

[19] * * *

Q Now, it is true, Mr. Fye, that Mr. Campbell was back in his lane before the Ospital vehicle passed, isn't that true? According to his testimony?

A According to his testimony. I don't think that's correct, but I think that's what his testimony is.

Q And it's undisputed that there was never a contact between his vehicle and Ospital; isn't that true?

A That's true. That's undisputed.

Q Mr. Fye, it's undisputed that the distance, the approximate distance from where Mr. Campbell would have pulled out to the crest of the hill was approximately a half a mile; isn't that true?

[20] A Yeah, I think -- I wouldn't say exactly a half a mile. I didn't measure it, but something in that area.

Q I said approximately a half a mile.

A Correct.

* * *

[26] * * *

Q Now, I want to talk to you about Officer Parker. You would agree that he had no financial stake in the outcome, would you not, Mr. Fye?

A Yes. Yes, I would.

Q You've read his testimony, both in his deposition and the trial transcript, have you not?

[27] A Yes.

Q You've heard him testify that he went to the hospital, and that he talked to Mr. Slusher, correct?

A Yes, I have.

Q And that he asked Mr. Slusher that there was some people that indicated that the gray car, or the Campbell car, had contributed to this accident. Do you recall him saying that?

A Yes.

Q And that Mr. Slusher told him that that was not the case, in the hospital, correct?

A That's what Trooper Parker said, yes.

Q Now, you also heard, or read the testimony of Dr. Terry from the trial transcript, Mr. Slusher's doctor, did you not?

A I did, but I'm afraid I don't recall any of it.

Q And that testimony was that Mr. Slusher would not have been inhibited in his ability to be able to speak and relate facts of the accident?

A No, I think he was lucid when Officer Parker was there.

* * *

[53] * * *

Q Mr. Fye, just for purposes of cleanup, I'm [54] going to show you Defendant's Exhibit 70-D, which I talked to you about --

A Mr. Belnap, did you want that back?

Q Thank you. Which I talked to you about briefly on Friday, and that was the agreement of June 3, 1983 that we showed to the jury?

A Yes.

MR. BELNAP: I'd move for its admission.

* * *

MR. BELNAP: I'd move for its admission. We can clean up the record later.

* * *

THE COURT: All right, received.

(WHEREUPON Exhibit Number 70 was received into evidence.)

* * *

[55] * * *

Q (BY MR. BELNAP) I want to show you what's been marked as 72-D, a letter, September 29, 1983, from Brent Hoggan to Wendell Bennett that we talked about on Friday and showed the jury the blowup drawing of.

MR. BELNAP: Move for its admission.

* * *

THE COURT: Received.

(WHEREUPON Exhibit Number 72 was received into evidence.)

Q (BY MR. BELNAP) I want to show you what's [56] been marked as 73-D, which is a satisfaction of judgment of the Slusher judgment.

MR. BELNAP: I'd move for its admission.

MR. HUMPHERYS: Actually two satisfactions, and we have no objection.

THE COURT: Received.

(WHEREUPON Exhibit Number 73 was received into evidence.)

* * *

Q (BY MR. BELNAP) Exhibit 76-D, the December [57] 6th, 1984 agreement that we talked about on Friday?

MR. BELNAP: Move for its admission.

THE COURT: Any objection, counsel?

MR. HUMPHERYS: I need to see it. No objection.

THE COURT: Received.

(WHEREUPON Exhibit Number 76 was received into evidence.)

* * *

Q (BY MR. BELNAP) Let me show you what's been marked as 78-D.

[58] MR. BELNAP: I'd move for its admission. As 78-D.

MR. HUMPHERYS: I have no objection to this being entered. This was not signed by Judge Christofferson. May we stipulate that this may be substituted by one which is signed by Judge Christofferson?

MR. BELNAP: That's fine.

THE COURT: Received on that basis.

(WHEREUPON Exhibit Number 78 was received into evidence.)

* * *

[70] * * *

REDIRECT EXAMINATION BY MR. HUMPHERYS:

* * *

[72] * * *

Q All right, let's now talk about some of those witnesses. First of all, let's talk about Mr. Campbell. You mentioned Friday, as I recall, that some of what Mr. Campbell said would implicate him in the accident?

A That's right.

Q So he said he wasn't at fault, but then he would say things that made him appear to be at fault. You referred to his deposition testimony. I'd like to refer to his actual testimony at trial and see if his testimony at trial had some bearing on whether he could have been found at fault.

If you will turn, please, to the trial transcript of 425, which is where Mr. Campbell is testifying about what happened at the time.

[73] A 425?

Q Yes.

A Okay, I have it.

Q Now, the question was regarding what happened at the time he was passing.

A Right.

Q Would you read his answer, starting on line 2.

A "That was a camper, and which was traveling slower than the regular speed, somewhere between 40 and 45 miles an hour. And as I pulled past it I noticed coming up on the top of the hill, a car came into view and I proceeded to pass. And as I did, I noticed that the closing rate between the car coming down the hill and I was greater than I had expected, and I continued to pass, but I crowded back in."

Q Now, what does the word "crowded back in" mean to you in terms of whether Mr. Campbell would be completely absolved of any fault?

MR. BELNAP: Your Honor, I'm going to object to that question as calling for him to speculate on what the witness is saying. The jury can read it, and for him to state that is just calling him to comment on the testimony of another witness.

MR. HUMPHERYS: I didn't ask him to give what [74] Mr. Campbell meant. I asked him what it meant to him as it related to his opinions that he's given.

THE COURT: All right, overruled.

THE WITNESS: If you say "crowded back in," that implies that you kind of move over against the traffic that you're passing, and they either make room for you, or they slow down and let you complete the pass. In other words, you crowd the traffic to your right.

Q (BY MR. HUMPHERYS) Would there be a need to crowd back in if there wasn't a hazard that was being created in front?

A No.

MR. BELNAP: Objection, leading, Your Honor.

THE COURT: I'll sustain the objection. Proceed with non-leading questions.

MR. HUMPHERYS: All right.

Q (BY MR. HUMPHERYS) Mr. Fye, what would that mean to you in terms of whether his testimony would implicate or not implicate himself in posing a hazard to Mr. Ospital?

A Well, as I indicated on my diagram, that there's a hazard. You would not normally crowd back in unless there was a hazardous situation that would force you to crowd in.

[97] * * *

Q (BY MR. HUMPHERYS) I'd like to cover a few other things that Mr. Belnap raised with you. Now, as it relates to the Excess Liability Handbook, drawing your attention to his Exhibit 66 and 67 regarding the fact that the Excess Liability Handbook had been obsoleted in 1979, and again in 1986. In all of your years working at State Farm, had you ever seen the --

A No, I've never worked at State Farm.

Q I'm sorry, in all your years working in cases involving State Farm, thank you. Have you ever seen the [98] memorandum,

Exhibit 67, which -- Excuse me, 66 -- No, it is 67, dated in 1979, which said that the Excess Liability Handbook was obsolete?

A I don't remember seeing it until it was produced in this case.

Q And would that have been within the last month or two?

A Right.

Q The other one that was dated in 1986, have you seen that one before?

A Yes.

Q All right. Now, drawing your attention to one of the questions, he asked, he asked whether all of the people in Utah that you were aware of, other than Mr. Crowe, had never seen the Excess Liability Handbook. And you made a distinction between seeing it and using it, or using the principles stated in it?

A Yes, I did. I think that's an important distinction.

Q Let me ask you, in all of your experience, are the principles, the improper principles set forth in the Excess Liability Handbook that you've been critical of and talked about, are they still, in effect, in practice at State Farm?

A Yes, they --

[99] MR. BELNAP: Excuse me, Mr. Fye, I'm going to object for lack of foundation, calls for a legal conclusion.

THE COURT: Overruled.

Q (BY MR. HUMPHERYS) Go ahead.

A In my experience with these cases, the improper portion, that is don't write things down, write self-serving memos, or in other words, make the file look like something other than it's not, those practices are being carried out today.

Q All right. And are they being taught, even in their training?

A Yes, they are.

MR. BELNAP: Your Honor -- Excuse me, Mr. Fye. I'm going, number one, that it's beyond the scope of cross. Number two, lack of foundation that this witness has to any training. He's not been involved, he's not been employed by State Farm in any training.

THE COURT: I'm going to sustain it as to foundation. Lay the foundation. But I believe it's within the scope of cross.

Q (BY MR. HUMPHERYS) Are you familiar with some of the training which has been done, oral training that has been done with the superintendents and other [100] claims managing personnel?

A I am, in my work in these cases I ask that my clients obtain from the defendant, State Farm, training courses, syllabi, that is when they give a course they either have a workbook a tape or a syllabus, and I ask them to obtain the video and audio tapes, the workbooks, the displays that are used in the courses, I try to obtain the tests and the answers that are used in the courses, and all of the handouts that are given to the students that attend State Farm training courses. And I keep these records and review them on the various subjects that these cases involve.

Q I have here what's been marked as Exhibit 53. Let me hand it to you. It is the Claim Superintendents Conference of 1986. Copies were previously provided to you, counsel. And the court has a courtesy copy.

Is this a transcription of the training that was done in 1986 with the superintendents?

A Yes. This transcript is from a conference that was held in Bloomington in 1986 called the Divisional Claim Superintendents Conference. And 177 divisional superintendents from around the United States gathered in Bloomington, and then they were given various training over a few days.

There's also some material in here, I [101] noticed, from the conference that was held in 1982, but there's no transcript of that.

Q That conference?

A That conference.

Q All right. Just so the jury now can recall where the divisional claims superintendents --

A It's third from the bottom, there, on the left.

Q Right here?

A Yes, uh-huh.

Q So is that a fairly high level of supervision in the management of the claims department?

A Yes. That's not first-line supervision, that's what you'd call second-line supervision.

Q All right. And who sponsored the 1986 conference?

A It was State Farm Auto Company, State Farm Mutual Automobile Insurance Company.

Q And was that the corporate office?

A Yes.

Q Okay. So that would have been in this area, here, teaching this area, here?

A Right. It actually would have been a function of the training department of general claims, and they would have assembled the speakers and the [102] panelists and various things, and made arrangements to have it video taped.

Q And does Exhibit 53 accurately represent a transcription of the video tapes that were taken of the training?

A Yes, it does.

Q All right. Now, I will ask the question again, based upon your review, have you seen where State Farm continues to teach, orally, the same wrongful principles that are contained in the Excess Liability Handbook?

MR. BELNAP: Your Honor, I'm going to object for lack of foundation. Also too remote, also Rule 404 of the Rules of Evidence. And I'd like to voir dire in aid of an objection, as well, on foundation.

THE COURT: I'll allow you to voir dire.

MR. BELNAP: Mr. Fye, you indicated that you had reviewed training materials; is that right?

THE WITNESS: Yes, that's correct.

MR. BELNAP: Can you name for me any training materials that you have reviewed, other than what I assume you're going to talk about on this '86 conference?

THE WITNESS: Yes, the claim operation review from the Alaska division in 1987, I believe. Are you [103] talking about on this specific point?

MR. BELNAP: No, I'm talking about training materials to claims people. That's what the question was.

THE WITNESS: I've reviewed -- There's a video collection called the Claim Video Network, and I've reviewed thirty or forty video tapes that are used in State Farm training, I have BI claims seminars, BI supervision seminars, basic claim courses. I probably have in total -- I don't want to be wrong with this estimate -- but I'd say somewhere between twenty and thirty actual descriptions of courses.

MR. BELNAP: All right. And Mr. Fye, of these courses, claims seminars, and videos, do you have any materials in there that you think correspond with the Excess Liability Manual that you can point to me specifically?

THE WITNESS: Well, that's what I'm about to do, here, and in the training conference.

MR. BELNAP: I'm not talking about the '86 conference, I'm talking about these other things that you just mentioned, that you could point me to specifically, that reference the Excess Liability Manual or the concepts that you've talked to this jury about from that manual?

[104] THE WITNESS: That's an interesting question. I can't, as I sit here, other than the examples I'm going to give you.

MR. BELNAP: I would move, Your Honor, or excuse me, not move, I would object to his testimony as to lack of foundation, unless he's referring to something to which he can claim specific foundation from the '86 conference.

MR. HUMPHERYS: Your Honor, let me just lay a couple more foundational questions.

THE COURT: All right.

Q (BY MR. HUMPHERYS) Has your review on this issue included reviewing sworn testimony of State Farm employees at every level in the corporation?

A It has.

Q Does that include hundreds of depositions?

A Yes, it has.

Q Does it also include internal memos where they communicate, where State Farm employees communicate with one another?

A True, it does. And it includes the testimony of the person most knowledgeable, who was discussing the Excess Liability Handbook.

MR. HUMPHERYS: All right. We would like to proceed, Your Honor. We submit it.

[105] THE COURT: Objection overruled.

Q (BY MR. HUMPHERYS) All right, now, would you please, if you remember my question -- if I can -- let's see --

A I think you were asking me to point out if there were instructions and training in this conference that basically, even though the Excess Liability Handbook had been ostensibly deleted in 1979, seven years before this conference was held -- And I was going to point out that in this conference, one of the speakers listed the two most important rules --

Q Hold on, before you get into the specifics --

A Okay.

MR. HUMPHERYS: Your Honor, we would offer Exhibit 53 into evidence. It comprises a transcript of the 1986 divisional claims superintendent's conference, and then some handout material produced by State Farm from the 1982 divisional claims superintendent's conference, but it contains no transcript. We have no record of it, and it was not produced.

MR. BELNAP: Your Honor, may I reserve an objection to a time when we can look at that? It's been offered, whatever his testimony is, it is. But could I have an opportunity to look at it when we have a few more minutes?

[106] THE COURT: Any reason why we have to have it in at this point?

MR. HUMPHERYS: Not the whole thing, but we're going to refer to one of the pages as illustration.

THE COURT: I won't let it in, but you can refer to it, and I'll allow Mr. Belnap a chance to examine it.

MR. HUMPHERYS: All right.

Q (BY MR. HUMPHERYS) Let me, first of all, show the jury some of the pages in the Excess Liability Handbook. Drawing your attention to Exhibit 21, the Excess Liability Handbook, page 2019. Hold on just a minute, I think that's not the right page. Page 2021.

A Okay.

Q Would you please read to the jury under the heading of "self-serving correspondence"?

A "The claim superintendent should not overlook the opportunity to strengthen his file by preparing self-serving correspondence. This bolsters our file as it expounds on the reasons we are taking the position stated in the particular file. If he calls upon the excess claim committee at an early time in the file, we may be able to suggest the text of such a letter."

* * *

[107] * * *

Q All right. Would you read, now -- First of all, what is the context of this part of the Excess Liability Handbook? What is happening, or what leads to this final note?

A Well, it deals with comments of defense attorney, about his analysis of the value and the chances for succeeding in a defense of a case, and about whether there's going to be an offer made using the policy limits or not.

Q All right, now, would you please read the section at the end, which has a note at the beginning of it.

A It says, "Note. This comment was made by a defense attorney, and indicates pessimism and doubt regarding our evaluation. In this circumstance, you could call him personally for an explanation of his comment, and request that he write a self-serving letter clarifying exactly what he meant, or, in the alternative, the claim superintendent can write a self-serving letter regarding the basis for the settlement authority extended."

* * *

[108] * * *

Q (BY MR. HUMPHERYS) That is page 12 of part V of the Excess Liability Handbook. Drawing your attention, here, does this address the issues regarding defense counsel that's being retained by State Farm to represent an insured?

A Yes, uh-huh.

Q All right, would you please number 5 and 7?

A Number 5 reads, "Estimate as to the amount of verdict if plaintiff wins," and in parentheses, "not in writing if policy limits are involved," close parentheses.

[109] Q In what context is this being portrayed?

* * *

THE WITNESS: The issue is that the company doesn't want the estimate put in writing if it exceeds or is close to the policy limits, because of the danger that there could be an allegation that the company behaved wrongfully, gambling about the policy limits.

Q (BY MR. HUMPHERYS) And here in number 7, does it essentially say the same thing?

A Yes, 7 says, "Opinion as to settlement value, parentheses, not in writing if possible limits could be involved."

[110] Q Limits, meaning policy limits?

A Policy limits, yes.

Q All right. Now, we can't go into the entire book now. What I want to ask you, as it relates to those points we've just discussed, you are going to illustrate that these kinds of wrongful principles are carried on orally. Can you please now relate to the jury, from the '86 conference training, whether or not these same principles were discussed and taught to the claims personnel?

A The notion that the auto company did not do this, that this was the fire company, is incorrect. Because the instructions in the auto company, seven years after this, was said to be obsoleted in this conference, basically set out very similar rules. The two rules in regards to this excess liability situation were --

* * *

[111] * * *

Q (BY MR. HUMPHERYS) Is this the portion of the transcript that you're referring to?

A Yes, and maybe I should just read it.

Q All right, let's go ahead, then, and I'll put it up on the screen for the jury to see. Starting, I believe right here. Go ahead.

A "There are two inviolate rules to writing a document to the claim file. One is, it's on an eight and a half by eleven sheet of paper. And secondly, all documents are prepared 'Dear Mr. so-and-so,' and 'Ladies and Gentlemen of the jury.' If you follow those two inviolate rules, you'll have no problems. But those are rules that need to be followed by your outside counsel, as well as your claims personnel, and they should be so advised."

* * *

[112] * * *

Q All right. Now, would you please read -- One moment, please.

When it indicates that outside counsel should be advised, or should be so advised, is it appropriate, in your opinion, that an

insurance company should be advising outside counsel, meaning someone like Mr. Bennett, to do the same thing, write his letters and memos and so forth to "ladies and gentlemen of the jury"?

[113] A Well, I have a bit of a problem with that, another portion of the Excess Liability Handbook that basically anticipates that when some attorney is going to appear representing the insured, he's going to write a letter to the company demanding that the case be settled within the policy limits.

And when you basically tell that lawyer to prepare his file to protect the insurance company, and not to protect the insured, then you've created a serious conflict of interest, and a serious problem in his handling of the case.

Q All right. I was going to go into some other examples, but we'll do that in your next part of your testimony, in the interest of time.

A Okay.

Q I want to cover a couple of more areas raised by Mr. Belnap. Mr. Belnap asked you, or asked, didn't State Farm pay for all of the judgments, the excess judgments, in 1989?

A Yes, they did.

Q Over $300,000. And didn't they pay for all of the attorneys fees and expenses associated with that?

A Yes.

Q Now, he raised the issue of, how could that be profitable when they paid so much, when the policy [114] limits were only twenty-five, and they could have paid the twenty-five and been out of this for far cheaper?

A Right.

Q Is it profitable to do what State Farm has done?

A It's ex --

MR. BELNAP: Your Honor, I'm going to object without foundation. It calls for a legal conclusion.

MR. HUMPHERYS: Your Honor, we addressed the foundation Friday at great length regarding this issue.

THE COURT: Overruled.

THE WITNESS: It is extremely profitable, and I think we'll get to that later. But the issue is that people just go away when they meet resistance. They don't sue as easily as we're sometimes told.

I've never seen a case so clear as the Campbell case, here, where the attorney involved for the insured was able to continue for however many years this has been. The average individual doesn't have that kind of staying power.

MR. BELNAP: Your Honor, this is not responsive to the question. It's just a narrative speech from the witness.

MR. HUMPHERYS: Your Honor, there is. He's laying this as circumstances from which he will give his [115] opinions.

THE COURT: All right, overruled.

THE WITNESS: The overwhelming value of taking a hard stand, or taking a tough stand on individual cases, is the very large number of cases that happen. And it's clear that for every one that will take on a company the size and with the resources of State Farm, there are hundreds, if not thousands that simply go away.

And it's a profitable stance, because it encourages the claims handlers that the company will back wrong decisions to the extent of the resources of the company. They'll just keep going and going.

Q Have you seen cases where State Farm has spent incredible amounts of money defending a very small amount of money?

A I have. I had a $7,200 auto fire in Houston, State Farm's --

MR. BELNAP: Your Honor, I'm going to move to strike, and also object in terms of relevancy, remoteness, and lack of similarity.

MR. HUMPHERYS: Your Honor, we're addressing a subject now that he raised regarding the profitability, and why taking hard stands is profitable. And this all fits into the entire pattern to explain [116] this.

THE COURT: I'm going to sustain the objection, I think we're getting far enough afield.

MR. HUMPHERYS: All right.

Q (BY MR. HUMPHERYS) Now, did State Farm, at one time -- Do we have evidence that, back in the latter sixties and early seventies, State Farm did an economic analysis regarding the profitability of these kinds of cases, and taking hard stands on them?

A Yes, in the Excess Liability Handbook there's a section that deals with a couple of hundred cases that occurred over a six-year period.

MR. BELNAP: Your Honor, this was not delved into in cross examination.

MR. HUMPHERYS: Your Honor, it has to do with profitability. It's the very issue that he raised.

THE COURT: I believe it's within the scope. It's overruled.

Q (BY MR. HUMPHERYS) Let me draw your attention, now, to page 2036 of the Excess Liability Handbook.

A Okay.

Q I'll put that up here on the screen. You mentioned, or Mr. Belnap talked about the fact that this related to the fire company. Would you just read the [117] first sentence so that we have the perspective of what this relates to?

MR. BELNAP: Is this from the talk of Mr. Hume?

MR. HUMPHERYS: Yes.

Q (BY MR. HUMPHERYS) By the way, who was Mr. Hume, again?

A Mr. Hume was an officer of State Farm Mutual Auto.

Q Let me just put that up so the jury can see that first of all. This is the beginning of that talk; is that correct?

A It's not the beginning, it's part of the talk.

Q Title page, I'm sorry?

A Right.

Q And here is Ross Hume's name, senior claim counsel, State Farm Mutual Automobile Insurance?

A Excuse me. That doesn't signify that he's an officer of the company, he's just a senior lawyer.

Q Right. But is there any mention here of the fire company here in this talk?

A No.

Q Now let's go into the text of this talk, on page 2036 under the heading, "The excess liability [118] claim," Exhibit 21, would you just confirm that what we're talking about is the auto company, here? Read the first sentence.

A "Since we're the largest writer of automobile liability insurance, it is probable that we have had more direct experience with claims in excess of the policy limits than any other insurer. About six years ago we decided that such claims should be carefully controlled so that a uniform company policy would be followed, and claims superintendents who were suffering through their first such claim could have the advantage of others who had previously gone through this ordeal.

"As a result, the excess claim committee was organized in the general claims department. An excess claim is defined as, one, any claim where there is a judgment against the insured in excess of the policy limits, and the plaintiff will not give a complete release for the amount of the policy limits, parentheses, this, of course, includes a number of cases where the tort judgment is being appealed, close parentheses, and two, any suit filed again the company for an amount in excess of the policy limits. A complete copy of each such file is maintained in the general claims department in the home office.

"We are very proud of the company's record [119] during this six-year period. As of June 30, 1972, 222 such files have been handled, with a potential exposure, based on ad damnum asked, of $32 million."

Q Now, rather than read the rest, we'll get into it in more detail, in essence do they begin to, or does Mr. Hume then begin to explain how much money they've been able to save?

A Yes.

Q Through what technique?

A They've reiterated their "offer and stand firm," they've appealed, or they've made partial settlements. One portion said they settled for thirty cents on the -- Where is that? "A portion of these were settled," down in the last paragraph, "We settled seventy-eight other claims with an excess exposure of $3.7 million for $1.2 million, or about 30 cents on the dollar."

Q Did they talk about how much money they were able to save on these claims?

A Yes. And it appears that they describe about 180 claims or so, and 170 or 180 of the 222, and they've apparently gotten those discharged for total payments of about $1.7 million, and while some were still pending, it looks like they had saved about $30 million at that point.

[120] Q Is there anywhere in this talk that you're aware of where the lives of those who have had excess judgments imposed upon them in these excess claims have been analyzed, to try and find out the loss, or the financial ruin to them?

A No.

Q Is there even a mention about the effect of these on the insured?

A It doesn't really deal with the people part of the equation. It's just the monetary part.

Q Now, based on what you know, either in this case and others, does State Farm now keep a record of what excess verdicts there are against it?

A They say they don't.

Q Is there, since they did back in 1972, in your opinion have they lost the capacity to be able to keep a record of these?

A No. They have a considerable capacity. There's a book called "Electronic Marvels at State Farm Mutual" extolling, back

in the sixties, what a tremendous data processing system for all manner of purposes the company had. There's no question that they had the capacity, and have it today.

Q Is there any explanation, with you as an expert, based upon your education and training, why [121] State Farm would no longer keep track of excess liability claims?

MR. BELNAP: Your Honor, that calls for a yes-or-no answer, and then I'd like to voir dire in aid of an objection.

THE COURT: Answer the question.

THE WITNESS: Could I have it again? I'm sorry, Your Honor.

Q (BY MR. HUMPHERYS) Based upon your education and experience, and all of your involvement in reading material, documents, depositions, claim files and the like, and your understanding of the computer system at State Farm, your understanding of when they did keep track of that information in the early sixties, or late sixties, early seventies, do you have an opinion as to why State Farm no longer keeps track of the excess liability claims, if it has the capacity to do so?

A Yes.

Q Would you please now tell the jury why?

THE COURT: Now, Mr. Belnap asked to voir dire, and I'll allow him the opportunity.

MR. HUMPHERYS: Okay.

MR. BELNAP: Mr. Fye, are you aware of the fact that there have been a number of excess verdict cases in Utah totalling seven in the time that State [122] Farm Auto has been doing business here in Utah?

THE WITNESS: Well, I heard you say that, but I don't know exactly what to make of that, Mr. Belnap.

MR. BELNAP: Okay, well, do you have any other information that would indicate to you that that's not correct?

MR. HUMPHERYS: Your Honor, this is cross examination.

THE COURT: I'm going to let him go a little further to see where he's going. I'm watching.

MR. HUMPHERYS: Okay.

THE WITNESS: Yes, I do.

MR. BELNAP: Okay, how many do you think have occurred --

THE WITNESS: You don't want to know what that is? Okay.

MR. BELNAP: How many do you think have occurred here in Utah, Mr. Fye?

THE WITNESS: I don't know the number, Mr. Belnap.

MR. BELNAP: You've told this jury about the way State Farm is organized in terms of region; isn't that correct?

THE WITNESS: Yes.

MR. BELNAP: Isn't it true, Mr. Fye, that [123] each time an excess verdict takes place, that the claims superintendent would know that?

THE WITNESS: Yes, he should.

MR. BELNAP: The divisional would know that?

THE WITNESS: He should, yes.

MR. BELNAP: And the regional vice president in this region would know that?

THE WITNESS: He should, but he wouldn't necessarily. Are you talking about the vice president of operations?

MR. BELNAP: No, I'm talking about either the vice president of operations or the regional vice president.

THE WITNESS: They both should know it. It's not clear to me that they always do.

MR. BELNAP: Okay. Have you reviewed the testimony of Mr. Arnold, Mr. Short --

THE WITNESS: Mike Arnold, Paul Short? Yes.

MR. BELNAP: And Buck Muskalski, the regional vice president?

THE WITNESS: I think I have. I've read Arnold and Short for sure.

MR. BELNAP: You, having read those, you saw, Mr. Fye, that both of those people, or excuse me, Mr. Arnold indicated that he had done an investigation [124] as to the number of verdicts totalling seven here in Utah.

THE WITNESS: Yes, that's what troubles me, actually.

MR. BELNAP: And testimony from the other people.

Your Honor, I would move that this opinion that he has is not proper expert opinion, it's without foundation. And if we're dealing with Utah, if he has another number other than seven, then let him state it, and the foundation for it. Based upon that organization basis.

MR. HUMPHERYS: This question went nationwide, it didn't go necessarily to Utah. It included Utah. It is not dependent upon the number. The issue is why State Farm chooses not to keep a record of excess liability cases nationwide and here in Utah.

MR. BELNAP: And I would just state in terms of why it's incompetent testimony. That's not the province of an expert. That's a conclusion.

THE COURT: Overruled, I'll allow him to answer.

THE WITNESS: I believe that they don't keep a record because of the consequences they would have in the field of juries, regulators and directors of the [125] company. Because if the numbers were known, and the calculations that the company was calculatedly taking hard stands on claims, the company would be subject to huge punitive damages, and the regulators would want to know that to stop the practice. But by keeping no evidence of the practices, the company can escape any kind of censure for doing it.

MR. BELNAP: I'd move to strike on the same basis of my objection, Your Honor.

THE COURT: Overruled.

Q (BY MR. HUMPHERYS) All right, now, Mr. Fye, did State Farm here in Utah keep any record of excess liability claims?

A They say not.

Q Have they produced any files, after being requested, of excess liability claims?

A No.

Q Was there review of seven, based upon testimony of a particular individual?

A Well, there was not a review by anyone other than that individual to the extent that he did.

Q Did he review all the files?

A No, he didn't review all of them.

MR. BELNAP: Your Honor, that misstates the testimony. And we gave the names --

[126] MR. HUMPHERYS: I don't think it does at all.

MR. BELNAP: -- of those cases to counsel and the courts that they were in. So to say otherwise is a misstatement of the testimony, Your Honor, and the evidence. And also runs contrary to a prior ruling of this court before this trial started.

MR. HUMPHERYS: Your Honor, we're not contesting the names they gave us are not excess liability claims. We're contesting the fact that they have an accurate record of how many there are.

THE COURT: Overruled.

Q (BY MR. HUMPHERYS) All right, now, Mr. Fye, did the names of these seven cases come from Mike Arnold?

A Yes.

Q And how long has he been in Utah?

A I don't know the exact time. He's not one of the longer-term employees here in Utah.

Q Less than two years?

A I seem to recall that.

Q And he's the one that gave testimony that there were seven excess claims?

A Yes, he's the one that went out and tried to find them.

* * *

[128] * * *

Q Now, Mr. Belnap raised the issue of a preliminary evaluation by Farmers Insurance Company finding Mr. Ospital at fault. Was that a fair way to look at the testimony of the Farmers adjuster?

A No, it wasn't, there was more to that story.

Q Would you please, just briefly and [129] succinctly, say what was the rest of the story not told?

A The Farmers adjuster said he had essentially the same problem that State Farm. He had a driver come over the hill, and go into the opposing lane and hit somebody. And there was an indication of speed, so he decided to pay his limits right then, no further questions asked.

Q As he proceeded with the investigation did he maintain that evaluation?

A That report was never changed, because it never had to be. They just decided to pay. But he didn't proceed any further.

Q All right. Did he indicate that he ever ruled out the possibility that Mr. Campbell was at fault?

A No, he didn't interview any of these other van driver witnesses.

Q How about Allstate Insurance Company?

A The same thing. The only thing that I've heard about is a preliminary report that an Allstate telephone claims person took over the phone, that indicates Ospital was 100 percent at fault, but it was recorded before any investigation was really done.

Q And after the investigation was done, what was Allstate's position?

[130] A Then their position was that Mr. Campbell's actions were in part, or largely responsible for the accident.

* * *

[Vol. 11, R. 10266, commencing at p. 4]

* * *

GARY T. FYE called as a witness by and on behalf of the Plaintiff, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:

Q Mr. Fye, you appreciate you're still under oath?

A I do.

Q Now, beginning when you gave some testimony, you rendered some opinions regarding the underlying case, and regarding some of the issues regarding the case.

I would like to draw your attention, now, to the issues of this case that pertain to State Farm's [5] practices and procedure and patterns nationwide.

A All right.

Q As opposed to this particular case. Now, I have here in front of us the picture and statement by Robert G. Macherle. We've seen this, and there's been some testimony about it. Would you please explain to the jury where this photograph and this quotation came from?

A That's on about page 25 of the basic claims course, the number one basic claims course at State Farm, and it's the section that's called, "Introduction to State Farm, part 2, Introduction to State Farm."

Q Is this the course that the new claims adjusters attend to learn what their job is?

A Yes, it is.

Q Now, I want to draw your attention to --

A Well, excuse me. They study this material before they go to the home office. This is the material they review while they're in their training period.

Q All right. So it's part of their training.

A It's an orientation sort of course, yeah.

Q All right. Now, as it relates to this particular quote, would you read it again? Can you see it from that angle?

A Yes, I --

[6] Q Let me see if I can pull it forward just a little bit. I think one of the jurors, or two of them, do not have an angle to be able to see it.

A "Let there be no doubt that our goal is to give the best, most efficient, most profitable service in the industry."

Q Based on your experience, knowledge, and education, is there anything about that quotation which you believe is improper in the insurance industry?

A I do. I think claims services should not be profitable, and that bringing profit into the claim operation is unethical. And it's been a traditional no-no, or taboo in the insurance industry to involve claims handlers in profit and loss issues. Those are issues that belong to other people in the insurance mechanism.

Q Well, is there anything wrong with a company making a profit?

A There's nothing wrong with an insurance company being profitable, it's just wrong to have the adjusters have an interest in that subject as they go about managing the affairs of an insured or a claim.

Q What I would like to do is just take a brief moment and have you explain why introducing profit into the claims department is improper and unethical in the [7] industry.

A Let me just real quickly draw that. If you remember, I showed the claim dollar with two cents for tax, 14 cents for overhead and salaries and buildings and things, and 5 cents for profit, 39 cents for property damage, and 47 cents for BI. And I guess I shouldn't be too hasty, here, I'm making it a little bit illegible.

Q You can turn back to the old one you drew if you wish.

A It's just as fast to do it this way before I can find it.

Q Okay.

A At any rate, the point is that, at point of sale, the profit in the transaction has already been made. The --

MR. BELNAP: Your Honor, I'm going to object to this for lack of foundation of this witness to testify in generalities as to State Farm in this case.

MR. HUMPHERYS: We already laid the foundation of this, and this is prefatory to going into the other issues of profit.

THE COURT: I'll allow it. Overruled.

THE WITNESS: This figure was basically calculated by the actuarial department, there was an [8] underwriting function that had to do with it, and the marketing department which regulates prices and so forth, and determines what a certain competitive situation is. These are the people who are responsible for making a profit for State Farm.

If you introduce profit issues into the claims transaction, here's what you have. You have the adjuster --

MR. BELNAP: Your Honor, there's not a question pending, and this is a narrative from this witness.

MR. HUMPHERYS: I believe there is a question pending, I was asking him to explain it. But if not, I'll ask you to explain it, Mr. Fye.

MR. BELNAP: I would just ask, for this witness, that we be able to proceed with question and answer, and not open-ended narrative.

MR. HUMPHERYS: Your Honor, with experts we have a situation where there has to be long explanations. And counsel is interrupting often to try and cut the flow of this.

MR. BELNAP: Your Honor, I'm going to object to that as a speaking objection.

THE COURT: I'm going to allow him some latitude in explaining his answer, but I'll be watching [9] it, and as soon as we get to a point where we can proceed in a more directed examination, I'm going to invite that, counsel.

MR. HUMPHERYS: All right.

Q (BY MR. HUMPHERYS) Please explain why profit is not appropriate, or is unethical in the industry, if profit is introduced into the claims department.

A If you have an adjuster who's serving an insured over here, and he's also serving profit goals, savings plans, non-accommodating attitudes toward claim handling, or a whole variety of other internal company goals, then he has a direct conflict of interest with what he or she is purportedly trying to serve, here. And that's the interest of an insured who has a loss.

And the only way that can be cured is to completely disclose all of these internal goals or plans to the insured, so that the insured is fully informed. And of course, if the insured was informed at point of sale that, instead of, like a good neighbor State Farm is there, like a non-accommodating neighbor State Farm is there, nobody would buy this policy.

In other words, it becomes a switch. You buy one thing, you buy a full-service policy, and you get a self-service policy.

Q All right, thank you. Now, Mr. Fye, I would [10] like to draw your attention to Mr. Manuel Mendoza. Do you recall who he is?

A Yes, I do. He's a senior claim consultant and lawyer, I believe, at the Bloomington general claims department.

Q Was his deposition taken in this case?

A It was.

Q Back in 1994?

A Yes.

MR. HUMPHERYS: Your Honor, Mr. Mendoza was designated as a 30-B-6 witness, and I believe the jury needs to understand what a 30-B-6 witness is. Could you please explain that?

THE COURT: You can go ahead, counsel.

MR. HUMPHERYS: I'll represent that under the Rules of Civil Procedure in our state, there is a way that you can require a company, or a corporation, to designate a witness to testify in its behalf, since a corporation can only act by and through people.

A request is made under Rule 30-B-6, a company designates a person to speak in its behalf on matters that pertain to the

issues in the case, and then that person then represents the company in speaking in its behalf. Did I state that correctly?

THE COURT: It sounds good to me.

[11] MR. HUMPHERYS: All right, thank you.

Q (BY MR. HUMPHERYS) I want to draw your attention, now, to the first page, or excuse me, page 4 of Mr. Mendoza's deposition. Can you see it from there?

A Yes, I can.

Q I asked, "State your name, please."

He says, "Manuel B. Mendoza."

Mr. Hanni then states, "Before you start, you need to know that Mr. Mendoza is the 30-B-6 witness, and he's the one that will also answer with respect to the excess that you're talking about."

Mr. Hanni then further says, "He is the witness we have designated."

And I asked, "In all respects?"

And Mr. Hanni, "To represent the company for all aspects."

A That was my understanding.

Q Did Mr. Mendoza talk about the issue of profit?

A He did.

Q In the claims department? I'd like to draw your attention now to page 312 of this deposition. Let me read the question, and if you'll read the answer, please.

A All right.

[12] Q "In one of the 'Obiter Dictums' -- What's an 'Obiter Dictum'?"

A "An 'Obiter Dictum' is a company newsletter issued quarterly. It's been discontinued, but up until 1993, I believe, it was the company's newspaper."

Q "Now, was this picture, here, of Mr. Macherle, and the statement also printed in an 'Obiter Dictum'? Or am I mistaken in making this representation? Or something similar?"

A "I think that language similar to that was, but not the picture, right."

Q "Okay. In one of the "Obiter Dictums" it referred to Mr. Macherle's goal of making the claims operation the most profitable in America. Do you recall that theme, or that statement being presented about five years ago, five to eight years ago?"

A And the answer is, "I recall that some article was in there by Robert Macherle relative to some things such as that, I don't recall any more than that."

Q "And what's your understanding of what it means to have a claim department that's profitable?"

A "I don't know what he meant."

Q "What does it mean to you to have a profitable claim department?"

A "I don't think that's a claim matter, in my [13] estimation."

Q "Why not?"

A "I think that the -- What claim people have to do their jobs -- " Excuse me. "What claim people have to do is do their jobs, settle the claims on a fair basis, and dispose of them as quickly as possible. And the profitability of the company has got to be somebody else's problem, and not the claim department's."

Q Is that what you've just explained to the jury?

A Yes, indeed.

Q In your experience, Mr. Fye, did State Farm follow what Mr. Mendoza said about having profit excluded from the claims department?

A No. State Farm has injected a program that brings profit issues clear from the executive offices, right down to where the rubber meets the road, where claims adjusters are handling individual claims. They do it through a program called the PP&R program.

Q All right. I was just going to ask you about the PP&R program. Let me lay a little foundation about the PP&R program.

A Okay.

Q In the course of the years that you have been researching, reading, and educating yourself regarding [14] State Farm as you described earlier, have you had the occasion to review the manuals regarding the PP&R program of State Farm?

A Yes, I have.

Q Have you reviewed the video transcripts that pertain to that?

A Yes.

Q The training material?

A Yes.

Q Have you reviewed PP&Rs of individuals in the company?

A Hundreds of them.

Q Have they been limited to any particular locality?

A No. The PP&R system is a national system, and the PP&Rs are similar, you know, with minor changes, in every part of the country.

Q Now, basically is a program of setting objectives and trying to meet them, such as the PP&R program, is it inherently evil or good?

A No -- Well, inherently a system of setting goals is great. There's no problem with setting goals. You can achieve more when you set goals, I think. And goal setting is a recognized way of doing business in America, and I'm not against goal setting. It's just [15] that you can't twist it and make it into something wrong, I don't feel.

Q Now, in this case, has State Farm produced, pursuant to the Rules of Civil Procedure, PP&Rs of various people in the Mountain States Region?

A Yes.

Q And have they produced various PP&Rs of national, or at least eight states or more, of individuals?

A Yes.

Q Divisional, excuse me, division managers, I should say, from the national level?

A Yes. Sometimes it's hard to see what level the PP&Rs represent, or what department, because of the blackout portions, but generally that's correct.

Q On those that were produced, have they been redacted from the names?

A Yes.

Q And so it's difficult for you to tell where they fit, because of the redaction of the names?

A And sometimes the location, it looks like.

Q But these have been produced by State Farm pursuant to the rules, here, and the requirements under the Utah Rules.

A Okay.

[16] Q Now, are these the only ones that you've seen, Mr. Fye?

A No.

Q Have you seen others?

A I've seen many others. I brought with me a bunch of boxes, which include four or five boxes of them that were from one case in California in 1993. I've seen, I've been involved in litigation involving State Farm in many states. I don't know the exact number, but Florida, Vermont, Alaska, Hawaii, California, Arizona, Oklahoma, and at least that many other states. And I've seen PP&Rs where they've been reluctantly produced in many of those cases.

Q All right. Now, Mr. Fye, before we go any further, I would like to offer --

A Excuse me.

Q Go ahead, if you want to further explain.

A I forgot Texas. Where I live. I'm sorry.

Q Okay. And that's a mighty big state, I understand, from Texans. Okay.

MR. HUMPHERYS: I'd like to offer into evidence, Your Honor, Exhibit 50. There are three volumes, volumes 1 through 3, that constitute Exhibit 50, they are what are referred to as the national PP&Rs of the division managers State Farm produced during the [17] last couple of months.

MR. BELNAP: And Your Honor, we have exchanged exhibits, except we did not receive a photocopy of these. And we have some that have just been brought from our office in a box. But if I could, at a break, just confer with counsel to make sure that we're talking about the same thing, we won't need to take that time now.

MR. HUMPHERYS: I'll represent that we have included everything that they've provided to us in these national PP&Rs.

THE COURT: They'll be received subject to counsel's opportunity to review them at a break.

(WHEREUPON Exhibit Number 50 was received into evidence.)

Q (BY MR. HUMPHERYS) This is one of the three volumes. Are these the PP&Rs you've been referring to?

A Yes.

Q And you can see, for example, where there's been redactions, signatures and names are taken off. Is that what you referred to?

A There are at least two other folders -- Is that the national, or Mountain States?

Q This one is the national.

A There are three volumes of each, I believe.

[18] Q Now, I would also like to offer into evidence Exhibit 51, volumes 1 through 3. These constitute the PP&Rs produced by State Farm within the last few months of some of the individuals in the Mountain States Region.

THE COURT: Any objection, counsel?

MR. BELNAP: No.

THE COURT: Received.

(WHEREUPON Exhibit Number 51 was received into evidence.)

MR. BELNAP: What was that number?

THE COURT: Fifty-one.

MR. HUMPHERYS: Number 51, volumes 1, 2, and 3.

Q (BY MR. HUMPHERYS) Do these also represent PP&Rs of individuals who had some involvement in the Campbell file, as well as others?

A Yes.

Q And have these also been redacted, at least as far as names and signatures of some of them?

A Yes.

MR. BELNAP: Counsel, how many volumes are the national binders?

MR. HUMPHERYS: Three. Each of them are three. Or is three, I should say, or however the [19] grammatical way should be.

Q (BY MR. HUMPHERYS) All right, Mr. Fye, and you've indicated that, how many, four or five boxes that you have back here behind us are also PP&Rs of other states?

A Yes. The large number of them are from the California-Arizona area, and they were produced in the Singh case.

Q Do some of these PP&Rs have good goals in them?

A Sure.

Q Do they seek to have good things done, in your opinion?

A Yes, they do. This whole idea of prompt contact, for instance, is a good thing. And there's nothing wrong with prompt contact. That would be found in a lot of the PP&Rs.

Q All right. Now, what I would like to do is have you explain, if you can, and if you've brought anything with us to illustrate it, to learn about how the PP&R program operates within the system of State Farm claims department.

A Well, when we refer to the PP&Rs, these are an annual evaluation system where they set goals, and then at certain periods, quarterly or semiannually, [20] review them with the employee.

There's a tape that instructs on how this program relates to the claim operation. The tape is about twenty-two minutes long, I think, and I've edited it down to about five minutes, and brought a video tape with me to show just basically what it's about.

MR. HUMPHERYS: Before we show that, I would like to offer into evidence Plaintiff's Exhibit Number 52, which is the PP&R manuals, instructions, and transcripts of the video training material.

MR. BELNAP: There's not enough room in here to bring everything in, Your Honor.

THE COURT: I understand.

MR. BELNAP: Could I have just a moment, Your Honor?

MR. HUMPHERYS: We have offered Exhibit 52 into evidence. Is there any objection to that?

MR. BELNAP: Let me just check. Go ahead.

MR. HUMPHERYS: All right.

Q (BY MR. HUMPHERYS) Before we show the video, and while he's looking at that, Mr. Fye, do these represent all of the PP&Rs in our region, Mountain States Region?

A No, they don't.

Q Were those only a portion produced by State [21] Farm?

A Yes.

Q Excuse me. These represent all that was produced by State Farm, but only a portion of those that exist.

A That's correct.

Q Okay. Have you found that the PP&R program, as applied in your review of all of these states, not just in these exhibits, but in other cases, are there common themes that you find in all of the PP&R programs throughout the country?

A Yes.

Q And when you have referred to the profit motivation being introduced in the claims department, is that, have you found that that is pervasive through the entire PP&R system in the claims department?

MR. BELNAP: Objection, foundation, leading.

THE COURT: I'll sustain it on leading.

Q (BY MR. HUMPHERYS) What have you found in regards to your review of the PP&Rs that you've seen throughout the country regarding profit?

A I've found it to be remarkable. It's a device that redirects the focus of the claims operation from the service function --

MR. BELNAP: Your Honor, this is not [22] responsive to the question. This is an editorial by this witness, and that wasn't the question. What has he found, foundationally?

MR. HUMPHERYS: I said what did he find as it related to profit? It is responsive.

THE COURT: Overruled, I think he was responding.

THE WITNESS: It creates an internal cultural value, if you will, in the claims operation, that if you want to get ahead in this company, you achieve outcomes. You keep your eye on outcomes that will make the company profitable, not that will serve the insuring public best.

And I found it universal, throughout the State Farm organization, effective in that the employees are basically reassured constantly that what they're doing is right, and it isn't, and that people within the organization do things that they wouldn't otherwise do to help the company achieve profits because of this program.

MR. HUMPHERYS: All right, have you had a chance to look at Exhibit 52?

MR. BELNAP: Thank you. No objection.

THE COURT: Received.

[23] (WHEREUPON Exhibit Number 52 was received into evidence.)

Q (BY MR. HUMPHERYS) Now, as we look at the video, Mr. Fye, are there certain points in this edited selection that you wish to focus on, so the jury can pay attention to those particular points as they view the video, and what are they?

A Basically three things. One is that these outcomes are related to salary increases and promotions, implying if you want

to get ahead you do it this way. The second thing is making the claims employee responsible for organizational goals.

I don't have any problem with personal development and becoming more proficient, and I try to become more proficient all my working life, and I have no quarrel with that whatsoever. It's the emphasis on the organizational goals at the adjuster level that bother me, particularly when those organizational goals involve reducing claim payments without any disclosure to the public.

MR. HUMPHERYS: Your Honor, we would, then, like to show the version of this particular video.

THE COURT: You may proceed.

MR. HUMPHERYS: Thank you. If one of you can kind of raise your hand if it needs to be adjusted a [24] different way, then let me know.

(The video was played to the jury, a transcript of which appears herein.)

"Hi, I'm Jim Hill, I work at corporate headquarters in the general personnel department. I'd like to take about twenty minutes to discuss PP&Rs with you. Some of what I'll be saying is pretty basic information. Because of that, this tape may be most useful for recently-promoted claim management.

"However, we also think that it can be useful as a review of some of the basic aspects of the PP&R process. We do have a longer education and training program which spends more time on the writing of objectives, and it's available through your regional personnel department.

"Performance Planning and Review is a performance appraisal system. The textbook definition for performance appraisal is the process by which an organization measures and evaluates an individual employee's behavior and accomplishments for a certain time period. Evaluations are typically done annually by the employee's immediate manager. The judgments are then used to make administrative decisions, such as salary increases or promotions.

"State Farm's performance appraisal program [25] is a participative goal-setting process, and the objectives established on PP&Rs play a major role in the evaluation of performance each year.

"In the claims area where you work, three different PP&R forms are used. The general PP&R form is used for all jobs other than claim representative and estimator. The PP&R for claim representatives and the one for estimators are refinements of the PP&R used in other areas. All PP&Rs include both operational and developmental goals.

"Operational goals address region, division, and unit objectives. In the PP&R for claim representatives and the one for estimators, developmental goals are identified from specific job aspects.

"The developmental goals sections of the PP&R for claim representatives looks like this. Under the heading of job aspects are seven competency areas. They are investigations, analysis and evaluation, negotiations, claims development and control, reporting, property damage, and personal effectiveness.

" -- how it goes. The first step is to be sure the employee understands what you are trying to accomplish. If you haven't done a PP&R with the employee before, take some time to explain it. This [26] should include reference to the organizational objectives set in the president's forecast which is released in July or August of each year.

"You also need to discuss regional planning activity and the goals of the unit. If the employee is a claim representative, you should also explain how the PP&R is related to promotional consideration.

"There are three basic types of performance appraisal goals. Personality traits, behaviors, and outcomes. Examples of personality trait goals are, 'Have a better attitude,' 'Show more initiative,' 'Develop leadership.'

"Behavioral goals are, 'Respond to customer complaints promptly,' "Organize desk for more efficiency,' 'Present a report clearly and concisely at unit meetings.'

"Outcome goals might include, 'Reduce property damage costs by 10 percent,' 'Increase re-inspections by 25 percent,' 'Increase subrogation receipts by 15 percent.'

"This is a good time to emphasize that the PP&R process is goal oriented, not process oriented. Completion of the PP&R is not our goal, our goal is completion of the objectives listed on the PP&R.

"Now, let's summarize what we've discussed. [27] PP&R goals should direct the employee's performance so that it contributes to organizational goals and develop the employee to be a more effective performer.

"There are three basic types of performance goals. Personality traits, behaviors, and outcomes. Personality trait goals should be avoided, because they are subjective, ambiguous, and difficult to measure. Goals should include the concept of time and measurability, and goals should be work related and meaningful.

"So there you have it. PP&R, not a complex process, but a very important one which does require thought and attention if it is to work."

Q (BY MR. HUMPHERYS) During the middle of that video tape, Mr. Fye, there was a reference to president's forecasts, incorporating or using the president's forecast in setting the objective goals.

A Right.

Q What is a president's forecast?

A This whole planning process starts in July or August of each year with a document that comes out of the executive office from the president of the company, Mr. Rust, and it sets out, in general terms, kind of the state of the company speech, and what the company should be striving for in the following year.

[28] It's used as a basis for the regional offices, then, to prepare provisional goals and budgets, and what they call their planning document, the regional plans. And those are submitted, along with unit division and section plans and so forth, to the executive office. They're revised, and then a final plan comes out in about November, I believe.

That, then, sets the pattern for what the company wants from its people the following year. And those are basically the origin of the outcome goals, the emphases the company will place on certain activities in the following year.

Q Now, drawing your attention to Exhibit 48. Are these a compilation of the president's forecasts from 1978 until 1993?

A Yes, I believe I remember that number. I've looked at that. I don't see it in front of me.

Q You're welcome to look here on this one.

A Here it is, I'm sorry. It's 48, yes.

Q They represent president's forecasts from 1978 through 1993?

A Yes.

Q Now, are there indications in this president's forecast -- Well, let me back up. Is the president's forecast sent on down the line in the claims [29] department?

A Yes, it, as you saw on the tape, it goes down to the supervisory levels. And the supervisors, when they do the PP&R interview and goal setting, basically explain it orally to the claims handlers. Sometimes claims handlers see the actual president's forecast, but my understanding is it goes down to the lowest levels of management.

Q So there's no confusion, the forecast is sent out a few months before the effective year. Is that an accurate statement?

A That's right. This July and August, the 1997 forecast will be written.

Q All right. So when we're looking at Exhibit 48, and it has on it 19, a letter dated 1977, the summer of 1977, that would be for the year 1978?

A That's right.

MR. HUMPHERYS: Okay. We offer Exhibit 48 into evidence.

MR. BELNAP: Your Honor, we do not have an objection, subject to a matter that we discussed with the court that Your Honor has indicated with respect to the '93 forecast, and we are in the process of addressing perhaps a couple of years prior to that. But if we could reserve on that to get some information to [30] Your Honor, subject to that reservation?

THE COURT: It'll be received subject to the reservation that we've taken up in court previously.

(WHEREUPON Exhibit Number 48 was received into evidence.)

MR. BELNAP: Does the court understand what I'm discussing? Or do we need a bench conference?

THE COURT: No, I understand.

MR. BELNAP: Thank you.

Q (BY MR. HUMPHERYS) All right, now, Mr. Fye, are there sections in this president's forecast that relate to introduction of profits into the claims department?

A Yes, there are.

MR. BELNAP: Your Honor, that simply called for a yes-or-no answer. I'd like foundation before he proceeds into particulars.

Q (BY MR. HUMPHERYS) Mr. Fye, have you read these?

A I have.

Q Are you familiar with what they mean?

A I am.

Q And are you familiar with the areas of the president's forecast that might relate to the opinions you have in this case?

[31] A Yes. Yes, I am.

Q All right. Now, Mr. Fye, I would like to ask you now, is everything in these president's forecasts what you would consider

to be improper or wrong for a company to introduce by way of objectives and goals?

A No, certainly not. There are many issues covered that have to be covered. I mean this is a big, complicated business, and it's proper to cover a lot of ground in these.

Q In what area are you critical, then, of these president's forecasts, if you are?

A I'm critical of the things that I mentioned before. These plans in the cover letters that send them out to the field, basically create the impression that the company is undergoing a constant crisis --

MR. BELNAP: Your Honor, could I just ask foundationally, so that I can be able to cross examine, which forecasts he is relying on for these general opinions.

MR. HUMPHERYS: Your Honor, what I intend to do is have him give his general opinions, which is permissible under the rules of evidence, and then we'll go into specifics. And he certainly can cross on specifics.

THE COURT: All right, that'll be acceptable. [32] Overruled.

THE WITNESS: And then they give specific directions to control indemnity payments.

And when you see the word "indemnity payments," insurance is a contract of indemnity, that is to make someone whole. So an indemnity payment is what is paid for a claim. This is the president of the company, basically telling the claims staff through this planning and PP&R process, "Drive the cost of claims down, or we won't be competitive."

Q (BY MR. HUMPHERYS) All right, can we, rather than look at this entire book page by page, can you single out a page or two that we can look at on the screen that you can illustrate what is going on regarding your opinion.

A Let me ask you to turn to the 1985 and 1986 forecasts.

MR. BELNAP: Mr. Fye, will you give me a reference to what is called a trial page?

THE WITNESS: Yes, I will. Just a minute, here, and I will. 138, which is the 1986 forecast. And actually, 153, which is the cover letter for the '87 forecast.

Q (BY MR. HUMPHERYS) All right, let's take them one at a time.

[33] MR. BELNAP: And fifty-which, Mr. Fye?

THE WITNESS: 138 and 153.

Q (BY MR. HUMPHERYS) In Exhibit 48, trial page 138 --

THE WITNESS: Excuse me, Mr. Belnap, I see your numbers on here, too. Do you want your number?

MR. BELNAP: No, I want the trial page number.

THE WITNESS: Okay.

Q (BY MR. HUMPHERYS) Tell us, first of all, on trial page 138, what this is.

A This is a cover letter that encloses the forecast when it's sent out to the regional vice presidents for distribution in the claims organization. And this is a typical example, I believe, where the president of the company is saying, "We've got strong production and growth, but we've got worst ever underwriting results."

Q You're reading from the first sentence here?

A Right. And he goes down two paragraphs below the, the fourth one says, "We strongly urge you," strongly, "and all members of your regional management team, to apply all the time and effort appropriate to the development of very thorough plans for 1986." And so forth.

[34] And then in the last sentence, "State Farm people have one great characteristic. They react well to our problems."

And if you can go from that letter to the one immediately following, the very next year --

Q What page is that?

A It's page 153. Trial page 153.

Q That's a different year, isn't it?

A Yes, it's the following year.

Q Before I -- Well, are we going to come back to this year? Because I'd like to show now some of the contents of what's in that forecast.

A Yes, I just wanted to indicate what the final result was before that happens.

Q All right, 153 of Exhibit 48.

A Right.

Q I'll put that up now.

A And here's what I have a problem with.

MR. BELNAP: Your Honor, I'd like to just object to these opinions as to these years as being remote and not in compliance with 403, or excuse me, 404 and 406 and the cases that we've previously referred to Your Honor on similarity and remoteness.

THE COURT: Overruled.

Q (BY MR. HUMPHERYS) All right, now, Mr. Fye, [35] let me ask a prefatory question in light of what Mr. Belnap said. Is what you're illustrating here the same thing that you see occur?

A Yes, I'm using this illustration because it relates their improvement directly to the claims handling.

Q All right. So it's not necessarily unique to these two years?

A Right.

Q All right.

A We can go back to 1977.

Q Now would you relate the point you were going to make, here, on page 158? Or 153, excuse me.

A The point I'm making is that I don't have any quarrel with the company making significant progress on a perceived problem. But if you look in the second paragraph it says, "The close attention being paid to underwriting and claim handling." It made the, again, made the claim operation an agent for achieving profitability.

And that's the flow from the corporate office down through the company that creates this claims culture that I'm talking about, where if you're going to get a reward, it's going to be for driving claims down, not for paying claims generously, or appropriately.

[36] Q All right. Now, these are just the introductory letters that we have focused on. Can we go back, now, into the year before, and can you show by that, that President Rust is actually addressing the issue of profits with the claims department?

A Right, I'm looking at page 139.

Q Now, this is part of the forecast, 1986?

A Yeah, this was the year before, and this is telling people where to direct their activities. And the heading up there is "Profit, Pricing, and Product." Profit, being the primary goal, and it starts out in the first portion, here, saying "Our primary goal in 1986 is to restore our property and casualty operations to a profitable position."

And then it goes on down under the auto portion below that, in the second paragraph from the bottom, "We must continue our efforts to control costs, efforts which include using periodic payment settlements, fighting non-meritorious claims with well-trained claims handlers, and use of medical and dental consultants," and other things.

Q Now, there's nothing wrong with fighting non-meritorious claims, is there?

A No. Non-meritorious claims should be resisted, except when you expand the definition, or have [37] a self-serving definition of what a non-meritorious claim is.

"Remember this motto, 'We pay what we owe, not a penny more, not a penny less.' But there's only one person who can identify what we owe, and that's the handling adjuster."

Well, the same thing is true of non-meritorious. It should be non-meritorious by some objective standard, not simply what the adjuster perceives as non-meritorious.

Q Let me have you focus for a minute on the Campbell case.

A Yes.

Q Based on your review of the material, did State Farm determine the Campbell case, the claims against Mr. Campbell were non-meritorious?

A They actually determined that they were, and then changed their file to show that they weren't, and encouraged the insured to say that they weren't by not telling them the facts, and it was not a non-meritorious claim.

Q Is that an example of how non-meritorious definition can be misused?

A That can be part of it, but actually I believe that what this particular portion is talking [38] about are fraudulent claims.

Q All right. Now, are there other sections in the president's forecast that relate to profit in the claims departments? Let me just ask it this way so we don't have to try and look at every one of these. Is the issue of profit in the claims department addressed in numerous of these president's forecasts?

A It is. It's from the beginning to the end, there are letters that encourage people to do something about the company's precarious financial results, and indemnity control exhortations.

Q Now, I'm going to come back to this time period where Mr. Rust is saying that this is worst ever, and we're having crisis and problems, and we'll look at financial statements to see whether that was an accurate depiction in a minute.

A Okay.

Q Now, but I'd like to continue to wrap up this PP&R program to see how it is being used in the company. You have mentioned some items. You've said that you were critical of the objectives to reduce the indemnity payments, or reduce payments in claims that are being imposed upon the employees in a claims department.

Let me have you look for a moment at an item which was prepared on one of these sheets by [39] Mr. Kingman. Were you present when Mr. Kingman testified?

A I was.

Q Were you here when he was asked whether there was emphasis by State Farm on reducing the average paid amounts on claims? Not there, I'm sorry.

A I think the -- Yes.

Q All right. Do you recall him testifying that State Farm does not emphasize reducing average paid claims?

A I do.

Q And another word for it is average paid costs, and another word is claim severity.

A Right.

Q Did you find that statement accurate in light of the documents which you have reviewed and studied, and that we have here today?

A It's not only inaccurate, it's very inaccurate.

Q All right. Now, so that we can go into the issue and understand it fully, why is it that if a company sets an objective for a claims person to reduce payments, why is that wrong?

MR. BELNAP: Asked and answered, Your Honor.

MR. HUMPHERYS: Let me phrase it this way.

[40] Q (BY MR. HUMPHERYS) To reduce average payments, why is that wrong?

MR. BELNAP: Same objection.

THE COURT: Overruled.

THE WITNESS: It creates a situation where people will handle a claim to achieve an average, and not handle it on its merits. To get their averages complied with, they'll basically underpay as many people as it takes to make up for the claim that's over the average. And that's cheating. It's unfair.

Q (BY MR. HUMPHERYS) Would -- Going back to the video, do you recall the reference by Mr. Hill in the video that there should be, or an example of an outcome-oriented goal would be to reduce the property payment claims?

A Right.

Q Now, that was actually in the video, wasn't it?

A That was actually in the video.

Q All right. Is this an outcome-oriented objective, or goal?

A Absolutely. And that's the type of goal that I've seen throughout these PP&R examples that I've gotten from virtually every state where there's been a State Farm case.

[41] Q I would like the jury to see some examples so that we know that what you're saying is verified by documents.

Let's start, first of all, in the Mountain States Region.

THE COURT: Did you have an objection?

MR. BELNAP: I just wanted to state that maybe this was an inadvertent statement on your part, but I think you mentioned that it was reduce property claims, and I think that mention was reduce property costs.

MR. HUMPHERYS: Yes, that is correct.

MR. BELNAP: Okay.

Q (BY MR. HUMPHERYS) Is there any difference in your mind in reducing property costs and reducing property claims?

A Yes, the cost would be what's actually paid, whereas if you tried to reduce property claims, that would be somehow stemming the flow of claims into the office to begin with. It doesn't --

Q But for purposes of reference, average paid claim, average paid cost, are they synonymous as far as you use them?

A Well, they're synonymous in that what we're looking at here is a fundamental insurance equation, and [42] that is frequency times severity. If you take frequency times the average paid claim, or the average payment, if you will, that's what creates your losses. The number of claims times the cost of the claims. So all these terms, basically, are designed to give the manager, or the claims adjuster, an idea of what average claim payments are.

Q All right, now, before we actually look at PP&Rs, I want to go to another conference which we do have. The '86 claims superintendents conference. We referred to that last week when you testified.

A Yes, we did.

Q That was a training conference of all divisional superintendents?

A Yes.

Q That was back at their home office in Bloomington?

A Yes, in Bloomington.

Q Was there a reference by Mr. Macherle, whose picture we have here in front of us, regarding his desire to have divisional claims superintendents address severity and frequency?

A He made a very strong point about the emphasis they should place on the large number of average claims. He basically said, you know, "With all [43] the money we've got in the bank, we can stand any loss for any one particular claim. What we can't take is," what he called the chronic losses. That is losses that, on the average.

Q I would like to focus directly on that portion of his talk. You've reviewed that, haven't you?

A Yes, it's in tape number 9.

Q All right. And you've made the transcription of that?

A Yes, I did.

Q And is it accurate, as far as you know?

A Oh, yeah. I'm sure that I'll keep finding typos and misspellings, but it's accurate.

MR. HUMPHERYS: All right. We've referred to a section of this previously, Your Honor. We would like to refer to Mr. Macherle's comment regarding this issue, which is not subject to one of their motions.

THE COURT: Proceed.

THE WITNESS: That would be 504, Mr. Belnap.

MR. HUMPHERYS: I think it would be 505, if I'm not mistaken. Check me if I'm wrong.

THE WITNESS: I think it starts on 504.

Q (BY MR. HUMPHERYS) Let me put up 504 so we have the context.

A Down at the bottom.

[44] Q You know it far better than I do. Okay. Now, this is the transcript of the talk by Mr. Macherle to the divisional claims superintendents.

A That's right. And down there at the bottom he's saying, "Especially in relation to the bottom line that I want to talk about,

and that is being better than the competition in everyday claim handling. Really what I'm talking about is the loss ratio. Because that's the difference between profit and loss.

"Now, I realize with ten billion dollars in surplus we can handle a lot of acute losses." And if I can digress, acute means recent, basically, in this context, or I'm sure that he probably means larger losses.

And then he goes on to say, "But we can't handle a chronic loss. The chronic loss is the one we don't ever want to get used to. And if our competition settles claims for less money than we do, we stand a good chance of being non-competitive." Do you want me to go on about --

Q Yeah, go down here into the next paragraph and read the sentence that starts, "Now."

A "Now, you all know losses are a function of frequency and severity."

Q Frequency being how many claims are made in a [45] given year, or time period?

A That's right. That's the number of claims, and severity being the average payment.

Q So such as what was suggested here that was not emphasized by Mr. Kingman?

A That's right.

Q Or that Mr. Kingman said was not emphasized. All right, now, would you continue on in that portion?

A "You can't do a whole lot about the frequency, but severity is strictly in our ball park. That's the one we have to totally worry about."

Q All right, now, explain what that means to an insurance person.

A That means that the focus of this claims operation is average paid claim.

Q The severity?

A That's right. Severity means the average payment to the insuring public.

Q Is he saying that the claims department can alter the outcome of severity?

MR. BELNAP: Your Honor, I'm going to object to this line of questioning. The document is up there, it's written in the English language, and he's speculating on what someone else in his mind is talking about.

[46] MR. HUMPHERYS: Your Honor, this is a technical subject, an expert is entitled to explain that.

THE COURT: I'll allow it. Overruled.

THE WITNESS: The title of this conference was, "The Bottom Line." And the whole issue, here, is the bottom line, meaning the profitability. It's injecting the profit issue right into the claim department.

Q (BY MR. HUMPHERYS) Was this claim department for other departments of State Farm -- Excuse me, was this conference given, or were those in attendance outside of the claim department, for the most part? Let me rephrase that. I've had a long night.

Was this training conference for the claims department?

A Yes, it was for, it was called the 1986 divisional claims superintendent's conference.

Q All right. Now, I'd like to go into some of the PP&Rs and show the jury how these objectives are translated and addressed.

A All right.

Q Let's, first of all, look in the Mountain States Region, some of the PP&Rs which were given to us by State Farm.

[47] A I kind of have my mind's eye, if I could interrupt that, on Karl Hahn and Ginger Stone PP&Rs from Alaska, which is --

Q Let's do this. Let me have you illustrate with the PP&Rs as you feel would properly illustrate your testimony, and we'll go into it as you feel would be appropriate.

A I appreciate that, because this was a long process for me of investigating this, and then finally finding out about it, because it was so hard to actually get these documents. And --

MR. BELNAP: Your Honor, there isn't a question pending for this narrative.

THE COURT: All right. Confine your comments to the questions that are before the court.

THE WITNESS: I'm sorry.

Q (BY MR. HUMPHERYS) All right, now, Mr. Fye, let me just have you give some background on obtaining the information regarding the PP&R program. Was this something that has been known for many years?

A It hasn't been known for many years.

Q And why not? Or how did it come about to become known?

MR. BELNAP: Your Honor, I'm just going to say, they made a choice to bring this witness in twice. [48] This was discussed at length on his first round of testimony, and it's repetitive.

MR. HUMPHERYS: It wasn't on the PP&R program.

MR. BELNAP: It was.

THE COURT: I'll allow you to proceed with this line.

THE WITNESS: Let me ask you for the question again.

Q (BY MR. HUMPHERYS) Yes. Would you please explain whether or not this was widely known for many years, and why it wasn't, or how you came about to become aware of this program?

A In the early eighties, I started becoming aware of the behavior that this program created, and for many years, when I was assisting parties in litigation informally, I explained that claims handling behaviors don't happen whimsically, or by accident, they're usually carefully engineered. They're programs. And claim behaviors are designed and achieved by management programs.

So I asked that certain requests be made for annual evaluation information. I didn't even know what the PP&R program was, I'd never even heard the term. And finally, in the mid to late eighties, they started [49] appearing, and it started explaining what I had been seeing earlier in the actual behavior, claims handling behavior.

And the reason I stopped, here, is that among the first ones I ran into were a claims superintendent in Anchorage, Alaska, who had supervised a series of the claims that were turning into bad faith claims. And that's in Exhibit 57-3.

MR. BELNAP: Trial page?

THE WITNESS: Trial page 672.

Q (BY MR. HUMPHERYS) And from that were you able to make some initial conclusions and draw some initial opinions about what was going on?

A I was. If you could --

MR. BELNAP: Could I have just a moment, Your Honor? Thank you.

MR. HUMPHERYS: All right.

THE COURT: Which file are we in?

THE WITNESS: It's trial page 672, I think there's a mylar copy of this.

MR. HUMPHERYS: I have it.

Q (BY MR. HUMPHERYS) And what is this, Mr. Fye?

A Karl Hahn was a claims superintendent in Anchorage, and supervising claims that turned into [50] litigated claims.

Q And what is this particular page?

A It's two pages from his January, 1987 PP&R.

Q All right. Did you obtain this through the process of Mr. Hahn being required to produce this document in the litigation?

A Yes.

Q And was this produced, was a copy of this produced during that litigation?

A Yes.

Q Was Mr. Hahn questioned under oath regarding it?

A Yes.

Q If you can recall.

A Yes.

Q And this is a true and accurate copy of it?

A Yes.

MR. HUMPHERYS: Your Honor, we would like to put this on the screen.

THE COURT: You may.

THE WITNESS: That's not the one.

Q (BY MR. HUMPHERYS) This is Ginger Stone, is it not?

A That's Ginger Stone.

Q Tell me what page you're looking at, then.

[51] A Trial page 672. Karl is with a K, H-A-H-N.

Q Okay, I'll get the right one, here. Here we are.

A Yes, that's the one. And this is the first page. Excuse me, Your Honor, I'm starting to --

Q Would you tell us what this is.

A This is the first page. And you can see the name is Karl Hahn, claim superintendent, and it has his signature as the employee, and it has his supervisor's name, Darrell Kimbell, and keep track of that name. And this is the first page. Just to identify who Mr. Hahn is.

Now, Mr. Hahn doesn't handle claims personally, he's a superintendent. He supervises a unit of auto adjusters who do handle the claims. So if you'll turn to the next page, which is 673, it'll show his goals.

Now, down at the bottom, there, if you can raise that, a little, it says, "Average paid cost. Reduce average paid BI by 5 percent." Well, in 1987, average BIs were, because of medical technology and inflation and whatnot, were increasing annually at about 10 percent. So the goal he had was basically to reduce average paid injury claims, and that included both third and

first-party injury claims, uninsured motorist [52] coverage, and third-party liability claims. His goal was to reduce those by approximately 15 percent.

Now, since he didn't handle claims, I was curious, "How do you achieve that? How do you make that goal work?"

So we got the PP&R of Ginger Stone, which is on 676 --

Q That's the one I started with. Okay. Okay, Ginger Stone. Now, was she in his division or unit?

A Yes, you can see that under employee signature, now, it's Ginger Stone, and supervisor's signature is Karl Hahn. And she's a claims specialist, an MA-3. And if you'll go to the next page.

Q This is her PP&R?

A This is a page from her PP&R. On number 5, down there. "Take a strong defense posture on investigation and negotiation on all cases." I put this up there because Mr. Hahn has the goal, Ginger Stone's responsibility is carrying out the goal. So how does she bring about claims handling that will achieve her supervisor's goal? It's by taking a defense posture on everything. Not just non-meritorious, not just claims that have weaknesses. The stance is to start with a strong defense posture on all cases.

And of course, as a claims man, I can tell [53] you that that is not only thoroughly wrong, it's abhorrently wrong. It's just absolutely what you would never want to see in a claims organization.

Q All right, do you have other illustrations that support your conclusion?

A If you will turn to page 690, which is a PP&R of Mr. Kimbell's. I hope I'm -- Yeah, 690.

Q Is his name up here?

A Yes. Well, I wrote that in there to identify this. This is a page from the documents that were produced in the Singh case in Los Angeles. Mr. Kimbell by that time had been promoted, because of the results he'd achieved, to be the manager of this Valley Claim Division, and this was one of the goals on his PP&R.

Q So this is now in California?

MR. BELNAP: Excuse me, counsel, I'd just like to move an objection to that conclusion on the part of Mr. Fye as without foundation, and move to strike as to the promotion of Darrell Kimbell and his reason for that.

THE COURT: Sustained. Lay the foundation.

MR. HUMPHERYS: Let me lay the foundation.

Q (BY MR. HUMPHERYS) Were you personally involved in the Singh trial?

A Yes, I was.

[54] Q And would you briefly explain how those documents came into being through the Singh trial?

A I think what Mr. Belnap was addressing is whether or not I knew Darrell Kimbell, and how he got to this position.

Q I understand that. But could you just relate briefly what was going on in the Singh trial where this document came from?

A In the Singh trial, a judge in Los Angeles ordered State Farm to produce PP&Rs from many of the California and adjacent states' claim operations to the plaintiff. And after the trial was concluded, through settlement, I was, I received a copy of these documents. I was present at the Singh trial when these documents were produced, and assisted Singh's counsel in sorting them and understanding them and interpreting them, so to speak.

Q All right. Now, you mentioned that you were aware that Mr. Kimbell had been promoted because of his performance. Would you describe the basis for your conclusion in that regard?

A Well, Darrell Kimbell was a divisional claims superintendent in Alaska while I was in Alaska, and I worked on cases which resulted from this hard stand that State Farm was taking about paying claims. And I [55] watched Mr. Kimbell's efforts, and attended his depositions, and I was aware of his progress through the company based on his zealous efforts at pursuing these programs.

Q Have you read his deposition testimony?

A I have.

Q And have you seen PP&Rs for Mr. Kimbell?

A Well, Mr. Kimbell is deceased now, but I have, yes, read older depositions.

Q And based on your experience, did you reach the opinion that he was promoted, given his objectives that he had met?

A I did, indeed.

Q All right. Now, let's draw our attention now to page 690.

A Again, if you'll -- Pardon me?

Q Of Exhibit 57, volume 3. You mentioned that this had been produced in the Singh trial?

A Yes.

Q Do these bar codes down below here, were they indicative of the documents that were being produced in the Singh trial?

A Yes, State Farm had a law firm in California bar code and sort these documents for production so that they'd have a permanent record of them.

[56] Q Okay. That is one way to identify them. Would you now please draw our attention to this particular page, and tell us how this supports the opinions that you've reached regarding reducing average paid claims.

A Well, if you'll look at the board, here, it says that State Farm doesn't emphasize average paid claim severity, or average paid costs, or whatever, and it says, "Goal number 2, improve management of indemnity costs. Current average paid costs for my section are," and he lists the coverage as 100 being bodily injury, 200, property damage, and then it says year end 90 average paid, and year end 90 goal average paid."

And then that's the measurement, and then down below, it talks about the results that were achieved. And then under that goal is a narrative, where Mr. Kimbell is explaining, "All of my average paids are less than the goal set, except BI." And I'll skip a few things, "But we continue to work hard on those."

Down at the bottom, he talks about, "This has greatly increased the number of files dropped by plaintiff's attorneys. Our average closed BI is currently $7,175. At year end 1990 it was $8,095. This is a reduction of $920 per claim, or 11.4 percent."

[57] And then the last sentence there says, "This equates to a savings of $10,139,320 over the trend of last year." So basically he's giving his savings report right in his PP&R, explaining how they've accomplished what they set out to do, or how good they're doing. Good means to make the claim payments go down.

Q Now, just on an aside for a moment, here, Mr. Fye, what has been your experience regarding the inflationary effects on claims?

A Well, claim values have trended upward. They don't always trend upward, but medical inflation has been significant during our lifetime, and diagnostic techniques, medications, sometimes inflation has been a factor in the country, but basically there have been forces that push the average paid claim up.

Q And if an objective is to reduce the amounts paid, is that inconsistent with the inflationary factors?

A It is.

* * *

[63] * * *

Q (BY MR. HUMPHERYS) We were talking, Mr. Fye, about examples of PP&Rs which demonstrate what you've been giving opinions about. Are there others that would illustrate, outside of the Mountain States, or the PP&Rs that have been produced in this state, which you feel need to be focused on?

A There's just a couple more from the Singh case. One is on trial page 692 and 693, and it's a PP&R for a superintendent by the name of Kaye Lindsey from one of the California regions.

Q Okay. Let me get to that page. You say it's 693?

A 692.

Q Okay. 692, is that just the first page?

A Yes, and that shows the average paid cost goals, but 693 has the particular portion that I wanted to point out.

Q All right, let me put here up on the screen page 3, this is his PP&R?

A Yes.

Q And this has the bar code down here

[64] A Right.

Q At the bottom?

A Right, this is one of those documents that was produced by State Farm in the Singh case.

Q All right.

A The point being the bottom of page 2 is about average paid claim, and sets various goals for the West Covina and Diamond Bar office.

Then let's go to the top of this. In the second paragraph, there, it talks about the units in West Covina, but the last sentence is the pertinent one and that is, "We're cognizant of our increase when evaluating claims." In other words, when the average paid claim is being encroached by some large settlements that the company has to make, the unwitting people who have the other claims, now, have an adjuster who's thinking about the large payments that were made yesterday, while he evaluates the claim payments that are going to be made tomorrow.

In other words, I mentioned that the influence on the other claims is the unfair part. This adjuster almost certainly is not going to go out to settle a claim with an accident victim and say, you know, "Gee, I'm awful sorry, but we paid $100,000 on a claim last week, so your claim is worth $25,000, but to [65] achieve our averages you're only going to get $5,000."

And you see, that's the part that is inherently wrong with the program. And this is where these average paid claim goals state it directly.

Q All right. Is there another illustration?

A There is. On page 712.

Q What is this?

A Well, remember I mentioned there being nothing wrong with a prompt contact rule. If you look at the middle of this page it says, 24-hour telephone contact rule on all BI and UM claimants. There's nothing wrong with that. But go down two lines. "Seize and control every unrepresented BI claimant." Well, that's wrong.

Q "Unrepresented" means what?

A That means someone who has a bodily injury claim but does not have a legal representative like a lawyer helping them understand the issues.

Q All right. And down here under indemnity costs.

A Again, the goals, they're trying to hold the line, that is, even though there are costs that are going up in medical technology and whatnot, in societal forces, the company is going to hold these costs down by being more aggressive.

[66] Q And you're referring to the line, here, about --

A Line 2, more aggressive BI and UM negotiations. And of course it is aggressive if you intend to seize and control unrepresented claimants.

Q All right. Is there another page associated with this one that is indicative of what you've been saying?

A Page 712, Angelo Mazza. Again, a Singh document produced by State Farm.

Q What's the bar code down here? Okay.

A Right. This is paragraph 3 that says "effective claims management," if you go down in the body of that.

It says the area that still needs a lot of work is the negotiation of BI claims, or bodily injury claims. "We have to train our people to do a job of articulating the strong points developed in our liability and medical investigation and analysis, and in presenting our case in a non-accommodating way."

And it goes on to describe that, but I can tell you from my own experience in claims management, that the last thing you want to tell claims adjusters, the last behavior you want to encourage in a claims operation, is to be non-accommodating. That is the [67] antithesis of a national advertising program that emphasizes kindness and responsiveness and caring attitudes.

Q All right. All right, now, you have referred to some from the Singh trial. Are there likewise examples, or similar examples that have been produced in this case?

A Yes, there have been national and Mountain States PP&Rs, and when I reviewed them, preparing to come to Utah, some of the material I had seen before, and had to return at the end of cases, so I didn't have it available to me.

But basically the PP&Rs showed the, at the management level, the emphasis is on profit down through the claim handling operation. So I found the same trends, not like what was said in the court, here, by Mr. Kingman, but I found that there was a preoccupation for average payments.

Q All right. Now, Mr. Fye, remind the jury who Bill Brown is.

A Bill Brown is the divisional claims superintendent who was in charge of the Campbell case. The handling adjuster was Ray Summers, the first line superintendent was Bob Noxon, and then the divisional superintendent, or his boss, was Bill Brown.

[68] Q All right. And he was the divisional superintendent at the time when the accident occurred?

A That's right.

Q Is he the one that instructed Mr. Summers to alter his report --

A Yes.

Q -- that you've referred to?

A Yes.

Q And when Mr. Summers said there was fault on the part of Mr. Campbell, to alter it to say there was no fault.

A Yes.

Q All right. Now, with that preface, let's go now to some of the PP&Rs of William Brown, or Bill Brown. Focusing your attention to Exhibit 51, volume 1, trial page 144. We have here, up at the top, his name, William Brown.

A Yes.

Q This is in January of 1983.

A Yes.

Q Now, we don't have all of his PP&Rs, do we?

A No, we don't.

Q They were not provided to us in the earlier years before this time; is that correct?

A That's correct.

[69] Q Okay. Now, this was done in December of, let's see, December of 1982 when this was prepared, but it was for the year 1993; is that your understanding?

A Yes.

MR. CHRISTENSEN: '83.

MR. HUMPHERYS: '83, thank you.

Q (BY MR. HUMPHERYS) All right, now, drawing your attention, here, to paragraph 2, under cost control goals, would you please read A and 1?

A "Cost control goals. Attain 1983 cost goals as per addendum by, 1, holding superintendents accountable for costs for their units, and holding quarterly followup with each superintendent regarding all costs."

Q Now, would Mr. Noxon be the superintendent referred to in paragraph 1?

A Yes.

Q And Noxon was --

A Well, he'd be one of those people.

Q One of them. He was the one that was directly over Ray Summers in the Campbell file?

A Correct.

Q Okay. Okay, I'd like to now draw your attention to the portion of his PP&R that he was referring to, and regarding a schedule. Again, this is [70] William Brown.

A Yes.

Q 1983.

A Right.

Q And down under the section of 1983 cost goals.

A His goals are paid average loss for coverage A, bodily injury -- I can't -- Is that a five?

Q $5,250.

A $5,250.

Q And that's what the anticipated goal would be if they were to reduce them, or to contain them, as he said earlier in his PP&R?

A Apparently.

Q Okay. And what is this side of the PP&R over here?

A That's the followup. That's where there are meetings, quarterly or semiannually, where the boss sits down with the person to see whether he's actually on the goal.

Q And this indicates "on goal." What does that mean in terms of his evaluation by his superior?

A That means that the average paid claim for those coverages, A, B, and C, or A, B, and G, pardon me, that would be bodily injury, property damage, and [71] collision coverage, those averages are right on goal.

Q All right. Is A bodily injury at this point in time?

A Yes. Right.

Q I understand there's been some changing, or some confusion regarding what the letters mean. Okay. Now, I'm going to have you look at another part of Mr. Brown's PP&Rs and information provided. Did State Farm produce a personal resume prepared by him?

A Yes, they did.

Q And was that for the purpose of his promotion, or his desired changes within the company?

A Yes, I think it's his reaction to the possibility of promotion.

Q All right. I just want to draw the attention of the jury to his name, William S. Brown, personal resume, January of 1984. Was this contained in State Farm's personnel file, as far as you understand it?

A Yes. I would assume that all these documents produced came from -- They don't call it personnel file, they call it a shield. The personnel shield.

Q All right. Now, on page 2 of his resume, I'd like to draw your attention to what he is indicating his most important career accomplishments. Would you please read that first sentence?

[72] A "Over the past three years, I feel that my most important accomplishments have been in developing improved agency management, claims management relationships and cooperation, increasing cost effectiveness by substantially increasing PPE," which I believe is policies per employee, "by meeting or exceeding nearly every cost-related goal."

Q As you reviewed his PP&Rs, did you determine that, in fact, that was the case, that he did meet his goals regarding the average paid claims and costs?

A He did. And he, as I understand it, was given promotional consideration also.

Q Now I'd like to draw your attention to another portion of his PP&R, this time a little bit later, which came in the form of a memorandum. And this is the same exhibit, trial page number 160. This is a memorandum to, the person has been redacted or blotted out.

A Yes, that's a memo to his boss, basically. When you see the employee talking about his PP&Rs, he's writing a followup to his boss to be reviewed.

Q All right. And the date of this is November 20, 1984.

A Yes.

Q Would you read, now, his comment within the [73] memo, on paragraph 2.

A Down there, he talks about having a terrible profit picture, and then he says "I'm rather proud of our severity accomplishments, since we did have an 8.3 decrease in bodily injury severity so far throughout 1984." And then he talks about holding increases and other lines, like property damage severity down.

Q And a little lower in the sentence that begins, "Our productivity."

A "Our productivity compares with like divisions and with the company as a whole, and shows that our average cost under the property coverages are much lower than any of our comparative divisions, and much lower than the company as a whole." I should explain --

Q Would you please explain your understanding of what this means from the insurance context.

A State Farm's management people are given management information system reports, or operating reports, basically to track average payments for units, divisions, states, company wide, so they're given a lot of information by which they can compare their operation against company wide, or against some other particular unit. It's almost like a competition. It's not a competition per se, and yet there's a general tendency [74] for statements like this to creep into these documents.

Q Mr. Fye, we have previously marked as Exhibit 8 what's called an Auto Administrative Report. Fifty-eight, excuse me. Thank you. It's dated December 31, 1993. Have you had a chance to review this?

A I have.

Q And generally what is it?

A It's a compilation of operating results on a statistical basis. It's a book of numbers, and it's broken down by certain subjects that are interesting to claims managers and administrators in

insurance companies. There are sections on underwriting, there are sections on claims. And the claims sections are basically broken down by state and by line of business.

Q By coverages, too?

A Yes.

Q Now, in this particular exhibit, was this produced by State Farm pursuant to the rules of requesting documents in Utah?

A That's my understanding, yes.

Q And it was produced within a month or two of now?

A Yes.

Q All right. Now --

MR. HUMPHERYS: Your Honor, we understand [75] that State Farm has objected to a portion of this. I would like to proffer, or offer it into evidence, subject to their review and further ruling on the matter.

THE COURT: Any objection on that basis?

MR. BELNAP: No.

THE COURT: Received.

(WHEREUPON Exhibit Number 58 was received into evidence.)

Q (BY MR. HUMPHERYS) Now, without necessarily showing the jury what's in it, I want to -- I'm not going to show that portion which was of concern. I just want to be able to show that statistically this report, for a one-year period, covers extensive numbers, extensive data, broken down in many different ways.

Is this part of their computer system data retrieval system?

A That's my understanding.

Q And is this provided to the claims management people for review and analysis?

A Yes. That's my understanding.

Q And does it contain computations regarding the average paid on claims?

A Yes. Not computations that are done by an individual, but it's data coming out of a data [76] processing system, and it's there for the purpose of being reviewed by management. I just thought of something, it would be a great cure for insomnia, too.

Q I'm not going to challenge anyone's mental capacity by showing parts of that book. At least not at this time.

All right, moving on with Mr. Brown. Now, were there times when Mr. Brown's average paid in various coverages exceeded his goals that he had set, or that his superior had set?

A Yes.

Q And in that context, how did Mr. Brown respond?

A When --

MR. BELNAP: Would you refer me to which document you're relying on?

MR. HUMPHERYS: Well, I'm not relying on any right now. This is general, and then I'm going to refer to page 197.

THE WITNESS: The response is -- Am I supposed to be answering it?

THE COURT: I think you're answering the question.

Q (BY MR. HUMPHERYS) Yes. How did he generally respond when he found himself over his goal?

[77] A Like management people throughout the company respond, and that is to create an action plan, or explain what happened, or create an action plan to remedy the problem. In other words, to give added emphasis to reversing the trend.

The general idea is that if you have a goal and don't meet it, you either identify it as an unrealistic goal, or you reassess your efforts and re-invigorate your people to go after the goal again.

Q Let me have you refer to his 1991 PP&R, page 227. On page 2, under the heading "Expense Management." Subparagraph A. Would you read the first couple of sentences, please.

A "We have tried substantially more cases this year than we have in any prior year in unit 228. We are taking a strong defensive posture on a great majority of our claims."

Q Was this in response to any problem he was having because he was not on target or on goal? Or do you remember?

A Well, what you're -- I don't see the --

Q This is 1991.

A 1991.

Q If you don't remember, that's fine. I appreciate that we're not going to be able to remember [78] everything in all of these pages.

A I don't.

Q All right. Now, continuing on at that same time period, I'd like to draw your attention to page 228 of his PP&R, specifically under heading "Claim Management goals."

A Uh-huh.

Q And under indemnity costs.

A Right.

Q Now, would you please go down here and read the sentence that begins, "In light of our -- "

A "In light of our strong defense posture, we were feeling that we might have a problem with our pendings. As you will recall, the PD pendings were a result of our PD department opening the PD liability with 10, rather than an 11 code."

Q We may be getting lost in the text of that. But read the last sentence where he kind of concludes.

A "But I feel that we have made a very good accomplishment at having 27.2 pendings, considering our present defense posture."

Q This was the strong defense posture referred to earlier?

A Right.

Q All right, and here he has his goals and his [79] nine months goals, and how they're doing on the indemnity costs.

A Right, and he discusses that in the last paragraph.

Q All right, would you please read the last paragraph.

A "Our indemnity cost goal was to try to keep our indemnity costs from increasing beyond the cost of living index for 1991 from the 1990 figures. Our average paid BI at the end of 1990 was $28,537. Through nine months of 1991 our average paid BI is down to $18,390.

"We feel that this figure will go up substantially over the next quarter since we have some very high reserves on two or three cases that we hope to be closing this year. The such-and-such case is one example. However, we feel that our goal will be met and exceeded since the ending figure for 1991 should be substantially lower than the ending figure of 1990. This is even with some of the very high cases that we would be settling."

Q All right. Now, in this process of the PP&Rs, does management give their sponsor evaluation to how a particular employee is performing?

A Yes, they'll summarize the accomplishments, [80] and make a recommendation at the end of a PP&R, there's a page or two that is left for a summary by the person's boss.

Q Let me draw your attention to page 230 of the same exhibit. Again, it's Bill Brown, this time it's 1991. And it's entitled "Summary Evaluation at Conclusion of Performance Period." Is that what you're referring to?

A Yes, I am.

Q All right, now, would you please read -- Is this prepared by Mr. Brown's supervisor?

A Yes.

Q Okay. Would you please read how he was evaluated?

A It says, "Bill, through his unit, has been very active in supporting our goal of trying more cases to attempt to get control of BI indemnity costs. Bill's results have been very good."

Q All right. There are a number of more we could look at in Bill Brown's, but let me just use a couple of others that we can

focus on. Let me have you turn to the PP&Rs of Carl Siani, page number 331, for example. This is a different individual; is that correct?

A Yes.

[81] Q Now, is this, again, his evaluation by his supervisor?

A Yes, that's what that portion should be. And that's on October 19th of '93.

Q All right. Now, would you please start here where the redaction is, regarding this person.

A "Strengths in BI management," somebody's strengths in BI management, "lie in taking a strong line in injury evaluations. This caused some increase in allocated adjustment expense, but -- "

Q What is an allocated adjustment expense? Is that like attorneys fees and costs?

A Yeah, that's when you hire a lawyer or hire an outside service.

Q Or an expert, or --

A Yeah, unallocated is where you rent an office and hire a staff. Allocated means you're allocating the expense to a particular claim file. That's all that means.

Q Okay. And that's been an increase due to what?

A It's been increased --

Q But he has --

A Wait a minute, I'm having trouble reading that. "Strengths in BI management lie in taking a [82] strong line in injury evaluations, and this caused some increase in expense."

In other words, like the PP&R before, when you take the Nancy Reagan approach to claims handling and, "Just say no," then you get sued. And you have to hire lawyers. And your pendings, that is the open files tend to go up, and your costs tend to go up for these outside services.

So what the company's trying to do is take a strong stance and deny more claims, and at the same time keep the pendings from going up and keep the expenses under control. And they're just not mutually consistent goals.

Q All right. Let's finish reading it. "But has," or, "But he has"?

A "Some good results in his suits."

Q All right. Let me take just a couple of others, so that we can see that these are not isolated. Let me have you turn to page 384.

MR. BELNAP: Your Honor, I'd move to strike counsel's comment concerning his allegation of isolation or non-isolation. It's not a question.

THE COURT: All right, motion granted.

Q (BY MR. HUMPHERYS) Now I'd like to have you turn to the PP&R of Grant Cutler. Now, Grant Cutler had [83] minimal involvement in this case, do you recall, as one of the claim committeemen?

A Actually, so minimal that I saw really little evidence of it.

Q But this is Grant Cutler, here, and it's December of '84. I don't know that we got all of his PP&Rs back that far, but he's a claims superintendent, correct?

A He is. And his -- Well, excuse me. A claim superintendent, right.

Q Right. Now, I'd like to have you focus on trial page 384 of this exhibit, which is one of his later pages in his PP&R. Down here at the bottom would you please, under Roman Numeral III, "Cost Control." Read the sentence.

A It says, "Attempt to meet cost and pending goal figures as per the attached unit experience and goal sheet for both units 301 and 311."

Q Now, we have 301. 311 is there too, but for illustrative purposes, we'll just turn to page 391 of this exhibit. And here is the schedule, or goals that he set forth. There's unit 301 that he referred to.

A Right.

Q All right. Now, looking at this particular page, can you explain to the jury how this illustrates [84] this process of setting goals at or below the year before, and trying to attain them?

A Well, basically over on the left-hand column it's partially cut off, but the first word there is "Average paid A, average paid B, average paid P, and average paid," something I can't read. Is that --

Q I think it's a D.

A A "D" as in Donald?

Q That's what it appears to me.

A Okay.

Q It may be a B, but it's a poor copy that we received.

A All right. Anyway, in the first column, this, I don't think this is a computer generated form. This was generated by somebody outside the computer. But it took the management information system figures, and kind of made a form that they could use to track their progress through 1984.

The actual 1983 results were $5,791, and their goal that year was 52 -- Back up. They had a goal of $5,250, but the actual cost was $5,792. And for 1984 they want to start with a $6,000 goal, goal for that period, and then they've even set out quarterly goals that kind of escalate back up to $6,000 for year end. Apparently anticipating an increase.

[85] Q All right. That's for coverage A?

A I would think so, but I'm a little confused by the D that crept in there.

Q Okay, now for average paid on U,

A Is that a U?

Q This is U, it appears to be.

A That's why it's such a high figure. That's uninsured motorist.

Q Okay. And the goal was $6,500 in 1983?

A Right.

Q And how much were they able to save below that?

A These are people that are uninsured motorist claims, these would be first-party injury claims, and they had a goal of over $6,000, and wound up paying just over $5,000 per claim.

Q And what was their goal from for 1984?

A $6,000.

Q And that would be less than their '83 goal?

A Yes.

Q And we can go through the others in the same analysis. Is this a common type of a review that you have found consistent throughout the units and divisions and sections of State Farm?

A Yes. The second line managers all have some [86] comparative claim data that they use to establish where they are, what they're doing, and to help support whatever action plans they're going to put in, or whatever emphasis they're going to place on a certain line of business.

Q All right. Let me ask you about some other goals that are contained in the PP&Rs, to see if you have an opinion. Do you have any opinion regarding outcome-oriented goals regarding first contact settlements?

A Well, I guess I don't understand your question fully.

Q You've seen some PP&Rs that have in them goals regarding how many first-contact settlements an adjuster should have.

A Yes.

Q And are you critical of that by the way it's being used in the PP&R program?

A I am. And the best illustration I can give you is that I think almost everyone has had the experience of walking with someone and having them fall down. And sometimes they'll cut themselves, sometimes they'll break a bone. And when you pick such a person up, they'll say, "I'm all right." And it's called denial. It's kind of a first step of a process that [87] people go through in reacting to something that's harmed them.

It's a time when you have to use a great deal of discretion in settling injury claims. Because it's not just that the manifestation of the injury hasn't fully emerged, it's also that the person's attitude toward what happened hasn't fully emerged. People have to go through a process, and have to think it through.

If you set a goal for claims people to go out and seize and control unrepresented people, and try to achieve a settlement, and you're given salary increases and promotions for that kind of activity, it leads to inappropriate claims handling practices.

Q All right. And had you seen where individuals in the Mountain States PP&Rs have been requested to increase the number of first contact settlements?

A Yes.

Q Are there only a certain number of first contact settlements that are appropriate? Certainly there are some, you agree with that?

A Sure, there are some.

Q Can one arbitrarily decide how many there should be, and prognosticate into the future how many there should be?

[88] A You know, if you look at an entire nation, or the huge -- Remember, the law of large numbers helps you predict numbers like that.

But in a local situation you don't have the law of large numbers working for you locally. Large number calculations will tell you a lot generically, but they won't tell you a lot about individual cases. Setting goals is a very dangerous practice in this area. That is to actually go out and achieve settlements.

It would be fine if you went out and settled a claim where a person was injured, and then they came back three days later and said, "I've had second thoughts, I really did an unwise thing." If your attitude at that point was, "Fine, let's tear that release up and let's do it again, let's see how you feel about it now," there would be nothing wrong with that.

But the problem comes when you achieve that settlement, you've got a release in your file, and now you're saying, "Sorry, Charlie, you signed a release, you're out of luck."

Q Now, I want to draw your attention to some of the PP&Rs in the mountain states. Again, the same exhibit, page number 1,587. This is Jerry Stevenson. Did Mr. Stevenson have some involvement in the Campbell file?

[89] A Yes, he did. He took over the supervision of it from Mr. Noxon at one point.

Q All right. This illustrates both items we've been talking about. But would you just read from here on down?

A Sure. "Maintain A and U," that's bodily injury and uninsured motorists, "costs at below maximum goals of, A, $4,226, and U, $3,000, during 1981 by, A, strive for at least six first-call A or U settlements per quarter, and keep track of these claims."

Q All right. Now, drawing your attention -- Let's see, let's make sure we have the date, March of 1981 to March of 1982. And he's being asked to get six first call settlements on both of those coverages?

A Yes.

Q What if there aren't six cases that are appropriate for six, or for first contact settlements?

A If the person is going to meet the goal, then he'll have to add a couple of inappropriate ones to the ones that are appropriate.

And the other side of the coin, of course, is that the people you're meeting with, by definition, if you're an adjuster and you're talking to these injured people, they're not represented by counsel, because you can't talk to them if they're represented by counsel.

[90] So there's an asymmetry of information. That is one person, the adjuster, has all the information about the claims process, the injured person really doesn't have too much information about the claims process, and doesn't have someone kind of on their side explaining the situation. That's why these claim practices start to get predatory, because they take advantage of the gullible and the defenseless people.

Q What is -- Does State Farm use the word "control claimants"?

A Yes, seize and control the unrepresented claimant.

Q Again, another PP&R from Jerry Stevenson. Same exhibit, page 1,609. I'd like to have you refer to subparagraph 5 under monitoring unit cost goals.

A It says, "Monitor unit cost goals, B, maintain early contacts with claimants for control and settlement."

Q Now I'd like to have you look at another section of his PP&R. Under a similar heading. "Monitor unit cost goals."

A "Monitor unit cost goals."

Q Would you please read item number 3.

A "Check with newly represented claimants to find out why they retained attorney."

[91] Q Why would it be important to an adjuster to find out why the claimant went to an attorney?

A Well, it would, they would want to find out if there was something in the claim process that drove someone to an attorney. But of course you realize that this goal is completely unethical. If they have retained an attorney, you are forbidden from doing this. You can't do this. You're not allowed to go to that represented person and make that inquiry.

And what this goal is really designed to do is to try to enter a dialogue with that represented person to make him question the wisdom of getting an attorney.

Q All right, let me refer now to the PP&R of Clark Davis. Now, does he also have a section in his PP&R which indicates that he is to assist in controlling costs, right here?

A Yes.

Q On the same exhibit, page 447?

A Yes.

Q And it says, "Assist in meeting the unit costs and pending goals as per the attached goal sheet"?

A Right.

Q Okay. I don't want to spend a lot of time with this, because there are many. But let me see if I [92] can focus your

attention on one of Mr. Davis' developmental goals. This is the same exhibit, trial page number 560. Would you please read number 5?

A It says, "Refrain from offering your settlement authority to plaintiff attorneys so as not to limit your ability to compromise settlement."

Q We've talked about their slogan of always offering fair value, not a penny more, not a penny less. Do you find that this goal is inconsistent with that?

A Absolutely. It says, "Don't mention what you've decided this case is worth, because you may be able to compromise it for less than it's worth."

Q Are there references in here regarding controlling defense counsel who's been retained to defend an insured of State Farm?

A Yes, there are instructions, not just in these PP&Rs, but nationally, about the need to control activities, control authority, minimize the costs.

Q I would like to have you turn to Grant Cutler's PP&R, starting at 383 in the same exhibit. Specifically trial page 397. Here's Grant Cutler.

A Yes.

Q The date is 1983. Would you please read number 4 under subsection G

A "Continuing to control and give direction to [93] our defense firms as to what we want to be done on each particular file."

Q Has it been your experience, Mr. Fye, that this type of goal, or control over defense firms, is commonly mentioned in their, either manuals or internal memos, or PP&Rs?

A Yes, it is, it's very common.

Q Now, let's make sure we understand who we're talking about when we're talking about a defense firm. Who is a defense firm?

A A defense firm, using the Campbell case as an example, is Mr. Bennett. An independent lawyer, not a staff lawyer, but an

independent lawyer hired to defend the insured, whose loyalties rest with the insured, but this is the company wanting to exercise complete control over the direction he defends the insured.

Q And would that be Mr. Bennett, Wendell Bennett in the Campbell file?

A Yes.

Q All right. I won't go into others that refer to the same. Let me ask you this, Mr. Fye. What is the effect of all of these kinds of outcome-oriented objectives that have been promoted through this PP&R program? What is the effect on State Farm?

A Well, it achieves exactly what the president [94] of the company wants it to achieve. It's hugely profitable. It adds tremendous revenues to the company that they otherwise would pay people who had claims.

Q All right now, we have marked as Exhibits 64 and 65 the financial statements of State Farm. And they, Exhibit 65 is a complete financial statement of State Farm in 1995, 64 is an abbreviated financial statement containing the balance sheets and some of the detail for the years 1978 through 1994.

MR. HUMPHERYS: We would proffer them into evidence. These have been produced by State Farm, or at least the years '78 through '94 have been produced by State Farm, and for the year 1995, Exhibit 65, it was obtained from the Utah Insurance Commissioner's office.

THE COURT: Any objection?

MR. BELNAP: I've not seen '64. I don't have an objection to 65, the 1995 financial statement. Could I have an opportunity to look at 64 and respond to that, Your Honor?

THE COURT: I'll admit 65 and allow you to view 64. I'll allow you to examine the witness on it.

(WHEREUPON Exhibit Number 65 was received into evidence.)

Q (BY MR. HUMPHERYS) Mr. Fye, have you compiled a summary of the assets and surplus of State [95] Farm during the period of 1978 through 1995?

A Yes, I have.

Q And are they contained in schedules?

A Yes.

Q And are they accurate to the best of your knowledge?

A Yes, I took them right off the State Farm-produced documents.

Q I'm going to mark each of these as separate exhibits. While she's marking that, tell me, are insurance companies required to file financial statements in each of the states where they do business?

A Yes, in March of each year they file annual reports to the insurance departments around the country.

Q And are the rules and laws that govern their accounting fairly regulated by the various states?

A Yes.

Q Must these reports accurately reflect their assets and income and so forth?

A Yes.

MR. BELNAP: Your Honor, may I just have, for the record, a reflection of a discussion with the court last evening on these matters, as if those objections were being made now?

THE COURT: You may.

[96] MR. HUMPHERYS: All right.

Q (BY MR. HUMPHERYS) Let me show you, Mr. Fye, what have been marked as Plaintiff's Exhibits 125 and 126. Are those the schedules which you have prepared?

A Yeah, these look like my calculations.

Q And are they representative of those figures contained in the financial statements?

A Yes. They start in 1977 and go through 1995.

Q And do they accurately represent a summary of the information provided on them?

A Yes. I just put the gross figure for each year down beside the year, for assets and surplus.

MR. HUMPHERYS: Your Honor, I apologize, I should have provided you with a copy, I will do that right now. We offer Plaintiff's Exhibit 125 and 126.

THE COURT: Any objection?

MR. BELNAP: Just the objection we've discussed with the court.

THE COURT: Okay, received.

(WHEREUPON Exhibits Numbers 125 and 126 were received into evidence.)

Q (BY MR. HUMPHERYS) What I would like to do, Mr. Fye, is to show the jury the one entitled "Surplus." Which number is that?

A It's Exhibit 125-P.

[97] Q Okay. Now, would you just orient us in terms of what this exhibit illustrates, and what it's about?

A First I should tell you what surplus is. Surplus is the insurance term for net worth. If you take any company's balance sheet, you have assets and you have liabilities. And if you subtract the liabilities from the assets, you come up with the net worth, which, in insurance terminology, is called surplus as regards policy holders.

And so this figure represents that line on each annual report that State Farm filed and produced, and the one they filed in '95 with the Utah department.

Q Their surplus in 1995 was how much?

A In 1995 was $25,119,972,333.

Q And what was it back in 1977?

A At year end '77 it was $2,652,819,153.

Q Have you computed what that amounts to per working day since 1977?

A Yes, I just calculated the gain over those years, and calculated the number of work days during those intervening years, and just did simple division that I've laid out there on the bottom of the display to show what their daily gain over that period of time was.

Q What is their daily gain?

A $4,304,053.

[98] Q Now, when you say per day, that's per work day?

A Per work day, yes.

Q And that's an average gain?

A Yes. It certainly would fluctuate. On any given day it would be more or less than that number. But over that period of time, that's been the steady increase.

Q Now, I'd like to go to your next exhibit, which was 126; is that right?

A 126-P, yes.

Q All right. And what does this depict?

A This is the first figure I mentioned. This is the pluses that the company owns. It owns buildings, subsidiary companies, and various forms of assets, cash and stocks and bonds and things like that. Real estate. And it started in 1977 at $6,228,034,156, and increased at year end 1995 to $54,755,652,804.

Q All right, now, has there ever been a year, here, where their value and assets has decreased?

A I can't find one. It's steadily increased over that period of time.

Q Now, you'll recall, I mentioned when we were looking at the president's forecast, that we were going to come back to that.

[99] A Yes.

Q And so I'd like to turn, now, back to Exhibit 48. You mentioned that there were time periods when State Farm, or Mr. Rust, the president, whether it was senior or junior, in his president's forecast, would attempt, or would describe the situation as being critical, or that State Farm was in poor shape. Would you just outline or specify those?

I'd like to show the jury what was said in the president's forecast regarding State Farm's financial condition. Do you have those available to you?

A I guess I'm wondering if you're referring to portions within the president's forecast, or the letters that are written.

Q The letters that are written. Let's take, for example --

A Let's take 1979, page 39, trial page 39.

Q All right. Let me put that up on the screen. We've not yet seen that one. What are you referring to, here?

A If you can look at this, the overall tone of this memo that is sent out, it's basically that these are challenging times, that the financial strength of the company is at stake.

[100] The second paragraph says, "There are strong signals that 1980 and 1981 may be the most difficult period since 1969 for our property-casualty insurance operations. Current loss trends, the volatility of the economy, the uncertainty of prices," and so forth. This is right after the energy crisis, or right, or during one of the concerns about energy, at any rate.

Then he, in the next paragraph, says, "It will take an extraordinary effort to attain acceptable underwriting results."

So if you go down and look at the asset growth in the following year from '79, you know, he's saying that, when it's going to be $8 billion at the end of that year, it goes up a billion and a half, and then goes up another billion the next year.

Q And these president's forecasts were sent to the claims department for purposes of setting objectives and goals?

A Yes. You can see that it's addressed to the regional vice presidents, but I've been familiar with the practice of the vice presidents to circulate these clear down to first-line management.

Q All right. First-line, meaning the adjusters?

A No, first-line management is the supervisor, [101] or superintendent. The adjusters frequently see them, but more often hear about them.

Q Now, have there been other letters sent by the president in these forecasts that indicated a dismal picture, and if so, give me the cite to that and I'll put it up on the screen.

MR. BELNAP: Your Honor, I'm going to object to counsel's editorials. The documents say what they say. If this witness is allowed to talk about it, so be it. But I'd move to strike those editorial comments.

THE COURT: Sustained. The motion to strike is granted.

THE WITNESS: How about --

Q (BY MR. HUMPHERYS) Go ahead, I was asking you if you saw any other years where there was a negative outlook? Is that acceptable to you?

A Well, the year before that talked about the pressures. Trial page 20. And I believe even the year before that.

Q All right, I don't have an overhead of that one. Is that a similar kind of comment that was in the following year?

A Yes. It just, that there are factors signaling unusual conditions. Pressures on our costs and so forth. Adverse legislative climate. Volatile [102] economy.

In other words, the president's forecast is generally something of a call to action. And of course there wouldn't be any reason for action if he said, "Everything's great. We've got steady growth and we're doing great."

Q Let me have you refer to page 133, President Rust's letter dated July 29, 1985.

A Okay.

Q I think we've read this before, but now it's for a different purpose. I'll read the first paragraph. "We find ourselves in a year of strong production and growth, coupled with our worst ever property and casualty underwriting result."

A Right.

Q Let's look at the year in question. Assets in 1985.

A '84?

Q '84 was $16,600,000,000?

A Right.

Q The next year it went up to what figure?

A It went up to $19.6 billion.

Q And in the next year?

A It went up, it looks like about $4 billion to 23.6.

[103] Q And the next year?

A It went up at three and a half billion.

Q Let's look at the surplus that was on the other exhibit during this period.

A In '84 it was 8.7, it went up to 10.1 billion.

Q In '85?

A At the year end '85, and then up to 12.2 year end '86.

Q What is your understanding regarding whether State Farm keeps any record of punitive damages that are assessed against the company?

A They claim, and have claimed consistently over the years that I've been involved in these cases, that they keep no record whatsoever of punitive damage results or verdicts or cases.

Q Has that been requested in this case, that they produce records of how much in punitive damages they have been --

A It has.

Q And what was their response?

A That they didn't have such a record.

Q Are you aware of whether or not punitive damages needs to be accounted for, for tax purposes?

A Absolutely. It's, as I understand it, the [104] IRS requires a report of punitive damages paid, because it's taxable.

Q Was there anything in the 1986 superintendent's conference, the claim superintendent's conference, that addressed the issue of whether punitive damages would be treated differently than the other costs against it?

A Yes, it was mentioned in that context, that, in the conference.

Q And can you relate to us, in summary, what was mentioned at that conference?

A Well, the basic thrust of it was that you can't just pay punitive damages and run that through as premium calculations, that it required special treatment.

Q In your opinion, does State Farm have the capacity, electronically, to keep track of its punitive damages if it chose to do so?

A It has a tremendous capacity to keep track of anything it chooses to do.

Q Based on your experience and education, do you have an opinion why State Farm does not keep track of punitive damages assessed against it?

A They --

MR. BELNAP: Your Honor -- Excuse me, [105] Mr. Fye. I'm going to object for lack of foundation, speculation.

THE COURT: Sustained.

Q (BY MR. HUMPHERYS) Let me lay some additional information. Have you read testimony from various officers regarding their accounting of punitive damages?

A Yes, I have. Mr. Haines, the claims vice president, Mr. Mendoza, and others.

Q Does that include Mr. Lehman, the executive vice president, or past executive vice president?

A Yes, it did.

Q Do they talk about their accounting and reporting and review of punitive damages against the company?

A They talk about it as if it had no business reason, that they have no business reason to do that at State Farm.

Q Is there evidence that you have read and seen, in the material that you have reviewed, that the corporate president, other executive officers, and the board of directors of State Farm, choose not to review the information regarding punitive damages?

A Yes, there is. There's clear evidence that --

[106] MR. BELNAP: Excuse me, that just calls for a yes-or-no answer.

Q (BY MR. HUMPHERYS) And your answer was yes?

A My answer was yes.

Q Would you now please relate the evidence that there is regarding this.

MR. BELNAP: Your Honor, I'm going to object for lack of foundation and speculation as framed in the question.

MR. HUMPHERYS: Your Honor, he's implicated, I've asked him what evidence is there.

THE COURT: Overruled, I'll allow him to state.

THE WITNESS: Well, Mr. Mendoza explained the process of how he handles punitive damage results, and whether the company makes changes as a result of those punitive damage verdicts that are rendered against the company.

Q (BY MR. HUMPHERYS) All right. And let's turn to his deposition, now, page 271, and read Mr. Mendoza's testimony. Now, he's the Rule 30-B-6 designated expert?

A Yes.

Q Now, what we'll do on this, so that it sounds appropriate, is I'll read the questions, and if you [107] don't mind being Mr. Mendoza for a few minutes and read his answers.

A All right.

MR. BELNAP: What page are you on?

MR. HUMPHERYS: I'm on page 271. And the following pages. On line 22.

Q Question. "When you have -- In those cases where you have seen punitive damages paid, was there any communication with the president's office to describe why punitive damages were assessed?"

A "No."

Q "Did the president's office address any of the problems on which the punitive damages were based?"

A "In any of that I've been involved in, no, I'm not aware of that."

Q Okay, then there were some discussions with counsel. Then, on page 273, question, on line 3. "In any case where you have paid out punitive damages, are you aware of any changes in State Farm's policies or procedures as a result?"

A "I can't recall any. They're usually so unique to a particular case that they don't apply broadly."

Q Now, turning to page 274. My question on line 18, "How about the case in Texas that resulted in a [108] $100 million punitive damage award? That was under your direction, wasn't it -- I shouldn't say that. The BI consultants that you worked with have the Texas region?"

A "Yes, they do."

Q "And that case fell under that region, did it not?"

A "Yes, it did."

Q "Were you aware that there was an allegation of course and conduct in that case?"

A "I don't recall the allegation, but there was -- There was a verdict that was rendered in that case."

Q "Was there any effect -- " Or excuse me, "Was there any effort from general claims to analyze the merits of any course and conduct claim, to your knowledge?"

A "Not at this point, no."

Q "Do you know whether there has been any discussion or intention expressed to modify or change State Farm's claim handling as a result of any case which awarded punitive damages?"

A "Broad, across-the-country change, is that what you're talking about?"

Q "Well, let's start with that."

A "No, I'm not aware of that."

[109] Q "How about regionally?"

A "No, I'm not aware of that."

Q "How about divisionally?"

A "I don't know of that."

Q "So the answer would be you know of none?"

A "No, that's right."

Q Mr. Fye, based on your review of the testimony of various people at State Farm, and reviewing their internal documents and manuals and other things which you have reviewed,

can you describe for us how State Farm handles cases against it for excess exposure, or extra contractual claims, and for punitive damages? How does it account for that, and how does it address those? If you'd like to use the board, you're welcome to.

A I will. I'll make this very fast. If you start with a claims unit, that's where the claim activity will be generated, where the punitive damage behavior starts, and where the case will be tried.

Above that is a level that I'll just label as divisional and sectional. State Farm has two different terms they use, divisions and sections. And that's where the divisional level supervision is.

Above that is a regional office where the, there's an operational head of the claim activity. But [110] in terms of line authority for claims handling, we go to general claims, and that's where this Mr. Mendoza resides occupationally. General claims is essentially the home office claim department.

And like in the case of the Postma versus State Farm in Ft. Worth, Texas that was $100 million in punitive damages, the information, he's saying he's saying, stopped right there. And where it would go if the company wanted to do something about it, would be to the next level, which would be the executive office, where Mr. Rust and Mr. Forsino and others who are in charge of State Farm reside, and then, of course, on top of that, is the board of directors.

Instead of this information being compiled in usable form, and being given to the board of directors to tell management and tell everybody on down the line to stop this behavior, there's a wall put up right here.

Q Now, you've had a chance to review Roger Lehman's deposition taken in Bloomington about a month and a half ago, haven't you?

A Yes, but please refresh my memory.

Q All right, I'll be kind.

A Thank you.

Q I'd like to refer to the deposition of Roger Lehman. First of all, can you tell us who he was for [111] many, many years before he retired a couple of years ago?

A Well, Mr. Lehman was a senior executive vice president. A true insider in the operation of the State Farm companies. The State Farm companies have basically had two families in the presidency, the Macherle family, Bob Macherle's grandfather founded the company, the fellow in the picture, here, the poster person, and then the Rust family took over, and Adelei Rust, Ed Rust, Senior, and then Ed Rust, Junior took the company over in 1985. Mr. Lehman was one of his top lieutenants.

Q All right. Now, I'd like to show on the overhead his testimony beginning on page 85.

A And where are you reading?

Q Starting line 5.

A All right.

Q I will ask the question, if you would please read his answer.

A Okay.

Q "Are you familiar -- Let me back up. In your experience in the corporate office over claims, to what extent are payments of punitive damages accounted for in any report or other compilation of data to you as a vice president in the president's office?"

A "Well, there were none, because we don't keep [112] records of those specifically."

Q "Would the same be true of punitive damages?"

A "The same would be true of punitive damages."

Q To your knowledge, Mr. Fye, in reading all of the testimony of these various State Farm employees, has State Farm ever changed what you consider, and have given opinions regarding, improper claims handling as a result of any punitive damage award against it?

A No. It's been the same from when I started, and it's the same now. It's been disguised at times, but it has not been changed.

Q Do you have an opinion why State Farm does not change its practices?

A It is hugely profitable to do this.

Q Now, Mr. Fye, we've not talked a lot, but I will be addressing you with another witness regarding the destruction of documents with State Farm. But I want to show you what we are going to mark as Plaintiff's Exhibit 127. It's entitled "Specific Document Destruction," 129-P. Do you recognize that list?

A I do.

Q Tell us what the list comprises.

A This is a list of documents that would help an expert analyze the claims handling behaviors in this [113] particular case, as the Campbell case and the underlying cases. So it's a list of various documents that at one time existed.

Q And to your knowledge have these documents been produced by State Farm in this case or any other case?

A They haven't.

Q Would these documents assist you in proving your opinions?

A Yes, they would be part of the picture that would, the pieces of the picture that would fill out the whole story of the claims handling.

Q Do you have similar kinds of documents that you have found? In other words, for example, there are a number of PP&Rs which are listed which have not been produced, or are claimed destroyed. Do you have other similar kinds of documents which have been produced?

A I do.

Q And have they been supportive of your opinion?

A They have.

MR. HUMPHERYS: We would offer Exhibit 127 into evidence.

MR. BELNAP: Your Honor, may I voir dire in aide of an objection?

[114] THE COURT: You may.

MR. BELNAP: Mr. Fye, paragraph number 3?

THE WITNESS: Yes.

MR. BELNAP: Do you have any personal knowledge if those documents have ever been requested in this case?

THE WITNESS: No.

MR. BELNAP: Okay. Paragraph number 6, Mr. Fye, do you have an Article 14 dated 1981?

THE WITNESS: Yes.

MR. BELNAP: Okay.

MR. HUMPHERYS: It's referring to prior versions.

MR. BELNAP: Mr. Fye, do you have any of the documents that are listed on Exhibit 127, or have you seen them?

MR. HUMPHERYS: Your Honor, let me give the court a courtesy copy. I apologize for not doing that sooner.

THE WITNESS: The only two categories would be number 9, which requests State Farm's records of punitive damages and payment of extra contractual claims. Naturally, having been involved in many of those claims, I've seen various documents from them. But they're almost invariably confidential --

[115] MR. BELNAP: Anything else?

THE WITNESS: I have seen school and training courses that perhaps the Utah claims personnel saw, but I don't know what they saw.

MR. BELNAP: Now, you formed your opinions in this case, that you have testified to, in this case, and in other cases, without these documents, did you not, Mr. Fye?

THE WITNESS: Yes.

MR. BELNAP: Can you tell us, of these documents, what information is in here, in any of these documents, or categories of documents?

THE WITNESS: Can I tell you what information is in there?

MR. BELNAP: Yes.

THE WITNESS: Generally narrative description of claim practices, and the emphasis that's being placed on programs within the company.

MR. BELNAP: Let me see if I can rephrase it. I'm talking about specific information, Mr. Fye, that you claim is in any of these documents that you can relate to us.

THE WITNESS: Maybe I heard wrong, but you're asking me to tell you what I saw in documents I've never seen?

[116] MR. BELNAP: I'm not trying to be cute with you, I'm asking for a specific foundational purpose to this exhibit, Mr. Fye. Is there anything in these categories of documents that you can specifically describe for us, what they consist of and what they say that would have a bearing specifically to the issues?

THE WITNESS: Well, Noxon's PP&Rs prior to 1992. Mr. Noxon, pardon me, I didn't mean to be disrespectful. The PP&Rs for any employee, I believe, should be a permanent record, and the PP&Rs that were in place when the Campbell accident happened would have been very helpful in analyzing Mr. Noxon's handling of the claim.

MR. BELNAP: But that isn't my question.

THE WITNESS: I'm getting to it.

MR. BELNAP: If you can bear with me. Can you tell me anything, specifically, in the Noxon PP&Rs that are contained in those that have not been produced?

THE WITNESS: Yes. They would have been the cost containment goals, the average payment goals, the direction of counsel, the way to handle combined liability reports, when they show that an insured might be at fault. In other words, all the PP&R categories that we've been looking at this morning would have been present on those PP&Rs.

[117] MR. BELNAP: How do you know that, Mr. Fye? Is that from having other documents that you have available to you that you claim to form the basis of your opinions?

THE WITNESS: Yes, I've seen documents from that time period, and they all have similar information.

MR. BELNAP: All right. Tell me specifically what other categories of documents on Exhibit 127 that you can describe for me, what is contained in those?

THE WITNESS: Well, on number 2, where it says the PP&Rs of others who were involved. Have I already answered that sufficiently?

MR. BELNAP: Yes.

THE WITNESS: Thank you. The regional plans. Remember, the president's forecast has a --

MR. BELNAP: Those have not been requested, Mr. Fye.

MR. HUMPHERYS: May he answer the question, Your Honor? He's cutting him off, and he's trying to explain it.

THE WITNESS: The regional plans have enclosures and exhibits and attachments which include the PP&Rs of all the supervisors, all of the divisional claims superintendents. So the regional plans for the years from '78 to '84 would be extremely helpful in [118] seeing what emphases led to claims like the Campbell case.

MR. BELNAP: Okay.

THE WITNESS: They would also have specific narrative reports from the regional office to the general claim department, or to the executive office.

Do you want me to go on?

MR. BELNAP: Yes, please. Any other categories that you can specifically describe for me what those documents contain?

THE WITNESS: Yes. Number 5 requests the divisional claims superintendent's conferences. And the 1989 auto divisional claims superintendent's conference included the main topics claim training, litigation management, property and medical cost management. There are eleven, a set of eleven tapes from the 1989 conference that would contain that material.

The --

MR. BELNAP: Have you seen those tapes, Mr. Fye?
THE WITNESS: I can't hear you.
MR. BELNAP: Have you seen those tapes?
THE WITNESS: No, I haven't.
MR. BELNAP: And go ahead.
THE WITNESS: The 1995 conference would [119] include material from which Mr. Kingman testified, apparently, and I've not seen those tapes either. There have been tapes in 19 --
MR. BELNAP: Do you know that those were taped, Mr. Fye?
THE WITNESS: I just have Mr. Kingman's testimony to go on, and he thought they were. There are divisional claims superintendent's conferences every two or three years, and there are records and tapes and syllabi and various materials from all of those. They basically are expressions of the general claims office to the divisional level on how to carry out the company's wishes in claims handling.

The Claims Superintendent's Manual articles, prior to the ones that I have, would clarify all of the issues regarding the development of the Excess Liability Handbook, and the practices that evolved in the auto company leading to the creation of that document by people who came from the auto department into the fire company.

The historical files on auto claims manuals, claims superintendent's manuals and Executive Liability Handbook, I would suspect.

MR. HUMPHERYS: Excess Liability Handbook.
THE WITNESS: What did I say?
[120] MR. HUMPHERYS: I think you said "executive."
THE WITNESS: I'm sorry, Excess Liability Handbook, those would contain the company's position with regard to the elements covered in those manuals prior to the editions that we do have.

And they would be very helpful in tracking a company's behaviors at any particular point in time, or in investigating the origin of any particular idea about claims handling.

MR. BELNAP: Does that, now, cover all of the points?
THE WITNESS: No.
MR. BELNAP: Okay.
THE WITNESS: The Combined Liability Report prepared by Ray Summers, which is the request number 8, would contain --
MR. BELNAP: That's assuming that there was such a destruction?
THE WITNESS: Yes.
MR. BELNAP: Okay.
THE WITNESS: It would contain Mr. Summers' followup report from the preliminary report showing Mr. Campbell to be at fault in the accident.
MR. BELNAP: Okay, have we now covered all of the points, Mr. Fye?
[121] THE WITNESS: I guess on number 10, which is the school and training courses of the Utah claims personnel, I'm sure that there are unit meeting minutes, and regional training courses that would show at various points in time what attitudes are being reflected by claims management.
MR. BELNAP: Okay, my question to you, then, if you're finished, is number one, have you testified in other cases to the same opinions that you've expressed here to this jury, based on the documents you've seen and reviewed?
THE WITNESS: Yes, I have.
MR. BELNAP: And you formed opinions in this case, as you have in other cases, and so testified, based upon the documents you've seen and reviewed.
THE WITNESS: That's correct.
MR. BELNAP: Your Honor, I'm going to object to Exhibit 127-P as being irrelevant, without foundation, and also under 403, subject to prior discussions with the court on matters before the trial started.
THE COURT: I have a question on item number 9. Has there been a foundation laid that State Farm has ever maintained

records of punitive damages and payments of extra contractual claims that have been destroyed?

[122] MR. HUMPHERYS: There was in the Excess Liability Handbook under part 4, Ross Hume's talk we've read that to the jury and talked about it a week ago, where Ross Hume analyzes 222 excess liability cases, and analyzes the profitability of those cases and how much money they were able to save.

THE COURT: That manual was prepared in what year?

MR. HUMPHERYS: That manual was prepared in 1972.

THE COURT: Anything since then?

MR. HUMPHERYS: I know of none.

THE COURT: I'm concerned about number 9, because there's an implication that there have been documents destroyed which, if all we have is that early document, I don't know that I'd be inclined to include that, here.

MR. HUMPHERYS: Well, Your Honor, we have testimony that there are tax records kept for the punitive damages. We have testimony, I believe, from either Mr. Ford or Mr. Clapper, where he testified that 1099s are prepared on punitive damage payments. However, none of those have been produced, or at least they say they don't have them.

Now, I understand the distinction between [123] having them exist and having them destroyed, as opposed to not having them exist at all. But I think there was some evidence that there was some of this information available that has been destroyed. To what extent, we can't determine.

MR. BELNAP: Your Honor, the testimony he's referring to was not that they're destroyed. There's been 1099s issued. It's simply a matter that, in the system, they're in with all the other vendor 1099s and everyone else. Without a file-by-file search, they've testified they can't pull them out that way. Of the thousands of millions of vendors that have been paid with 1099s.

THE COURT: I think I'm going to reserve on admitting this, and I want some more foundation laid. I believe that it would be important for the court to hear foundation that we're not dealing, here, with a routine practice, in this defendant's case, of destroying documents as part of an understandable, reasonable document destruction program, but one which is of a different scale, and may be in response to filed litigation and the like. So I think I'd be inclined to reserve on this until additional foundation is laid.

MR. HUMPHERYS: Let me lay a little additional foundation to this witness, and then we will [124] proceed to lay additional foundation with other witnesses.

Q (BY MR. HUMPHERYS) Mr. Fye, regarding number 7, and the historical files of the Auto Claims Manual, Claims Superintendent's Manual, and the Excess Liability Handbook, do you recall testimony being given by one of the home office employees of State Farm regarding the existence of historical files?

A Yes, I do.

Q And can you recall who that was that gave that testimony?

A It seems to me that Tracy Moredock and Mark Wells gave testimony about that to some extent.

Q And was it, approximately what time period was it that this testimony was given regarding the historical files on the manuals?

A Oh, also Dan Barringer, the company's archivist gave testimony about that.

Q All right.

A This was all within the last sixty days, ninety days.

Q Okay. But regarding the prior, or the first testimony in the Schlossberg case?

A In that case, Mr. Macherle testified.

Q And was there also one of his subordinates [125] that testified regarding the existence of these historical files?

A I don't recall --

Q Mr. Comella? Does that ring --

A Francis Comella, pardon me, that's right. He testified, I've read a two-volume deposition from that case, that's correct.

Q And that was approximately what time period?

A It seems to me that it was in 1985 to '87, in that area.

Q Was there a pending bad faith claim that was requesting that information at the time?

A Yes. Yes, there was.

Q And did that Schlossberg case remain in effect until 1991, when it was resolved? Or do you remember?

A I don't remember the date it was resolved.

Q Has State Farm in this case indicated that some historical files were destroyed?

A Yes, at various times they've indicated that. They've also indicated, in some of that testimony, that historical files of the manuals were kept in the education and training division. It's been conflicting testimony.

Q Now, Mr. Fye, you mentioned Mr. Barringer. [126] Who is Mr. Barringer?

A He was, until recently, State Farm's archivist in charge of keeping historical documents.

Q To your knowledge, was his deposition taken in this case?

A Yes.

Q And was a computer printout of all of the things that he had stored in his archive department produced?

A It was.

Q Were historical files contained on that index?

A Yes, they were.

Q Were there things that were non-manual?

A Yes, there were photographs, company news magazines, various brochures and things from the past.

Q Do you recall an entry regarding a band aid box?

A Yes. A lot of artifacts and advertising material, trinkets.

Q Has State Farm continued to gather these kinds of artifacts and stored them in the archive department?

A Yeah, as far as I know.

Q Have they stored their prior manuals?

[127] A They've not stored their prior manuals, to my knowledge. Certainly not in that department. The list didn't contain any significant number of historical claims manuals.

Q In the 1986 divisional claims superintendent's conference, which you received video copies in another case --

A Yes, uh-huh.

Q Were you involved personally in that case?

A Yes.

Q Did State Farm represent, through its testimony, the employees' testimonies that that video tape did not exist?

A Yes.

MR. BELNAP: Which -- Could I have that --

MR. HUMPHERYS: The video tape of the 1986 divisional claims superintendent's conference.

MR. BELNAP: Could I have just a moment, Your Honor?

THE COURT: You may.

MR. BELNAP: Your Honor, I'm going to object to that question. We produced the 1986 tapes to Mr. Fye in this case. I don't understand the relevance and foundation for that issue as to this line of questions.

MR. HUMPHERYS: This is foundation for the [128] tapes which have not been produced, and which have been claimed destroyed.

THE COURT: I'll allow it.

Q (BY MR. HUMPHERYS) All right, now, in this -- What case was it, by the way?

A In Martin versus State Farm in Tucson, Arizona, State Farm said that the tapes did not exist.

Q And later was another deposition taken of an employee of State Farm that said the opposite?

A No. In Lexington, Kentucky, in Bretts versus State Farm, another case that I'm involved in, State Farm said they did exist, but they wouldn't produce them.

Q And later did the court compel their production?

A Yes.

Q Now, has that divisional claims conference been useful in demonstrating that your opinions are, in fact, correct, regarding State Farm's improper practices?

A Absolutely.

Q Has State Farm had other divisional claims conferences?

A They have them regularly.

Q And to your knowledge, have people testified [129] that they are video taped?

A Yes.

Q In any other conference besides this one, which you obtained a copy in this other case, has State Farm ever produced a copy of those conferences?

A No.

Q Have they claimed that they've been destroyed?

A They've made various claims, including that, yes.

Q Now, are we just talking, on these conferences, of one video tape, or are we talking multiple video tapes of the conference?

A The 1989 is a set of eleven in the "Obiter Dictum" article.

Q You mean the article refers to the '89 being taped?

A That's right.

Q Was it offering training for people and others throughout the company?

A That's right. They tape the conferences and send the tapes out, so the whole company is reading from the same page, more or less.

Q And have they ever produced the 1989 claim conference?

[130] A No.

Q Now, the 1986, how many tapes were involved in the 1986, which we do have?

A Ten.

MR. HUMPHERYS: Your Honor, at this time, as part of this foundation, we would like to introduce into evidence the "Obiter Dictums", which have been marked as Plaintiff's Exhibit 49. They are, including "Obiter Dictums" from 1977 through 1992, which is the time period we understand they were terminated from publication.

THE COURT: Any objection, counsel?

MR. BELNAP: No.

THE COURT: Received.

(WHEREUPON Exhibit Number 49 was received into evidence.)

Q (BY MR. HUMPHERYS) Now, I'd like to have you turn, or look at trial page 49 of the "Obiter Dictums." Do you have those in front of you?

A Yes, I do, right here.

Q I'm sorry, I need to adjust this. This is not trial page 49 of Exhibit 49. It is trial page 49 of your exhibits, which are Exhibit 57, volumes 1 through 3; is that correct?

A That's correct.

[131] Q If you'd turn to page 49 of your exhibits.

A I have it.

Q Is that a copy of the "Obiter Dictum"?

A It's page 6 of the "Obiter Dictum" from October of 1989.

Q All right. Would you read to the jury what it says about the 1989 auto divisional claims superintendent's conference?

MR. BELNAP: I can't throw these binders around that quick. Which volume, Mr. Fye?

THE WITNESS: It's my Exhibit 57, parentheses 1.

MR. BELNAP: But which volume of your usual suspect volumes? Which volume of your volumes, Mr. Fye? Excuse me.

THE WITNESS: I think it's 1. Volume 1.

MR. BELNAP: All right, and which --
THE WITNESS: It's number 5.
MR. BELNAP: Thank you.
Q (BY MR. HUMPHERYS) Are you with me?
A Yes, I am.
MR. HUMPHERYS: Just a minute, are you set?
MR. BELNAP: I'm set.
Q (BY MR. HUMPHERYS) Would you read to us, now, this section in the "Obiter Dictum"?
[132] A It says, "Selected segments of the 1989 auto divisional claims superintendent's conference have been edited for use in seminars and workshops on a local basis. The major topics covered include claim training, litigation management, property matters, and medical cost management. The tapes -- "
Q Go ahead.
A "The tapes may be ordered individually or as a set of eleven, using normal auto claims lending library procedures."
Q Is there a lending library at State Farm of numerous videos, which is part of their training?
A Well, the name has changed slightly. There's a claim video network and lending library apparently is not being used as a term any more.
Q But it was the same thing?
A Right.
Q All right. And are the videos available for the regular personnel in the claims department to order and review?
A Yeah, one of the things you'll see in PP&Rs is requirements that videos are reviewed in unit meetings for the purpose of training. And these videos are being offered for that purpose.
Q To your knowledge -- Well, we've already [133] asked that question.
MR. HUMPHERYS: Your Honor, I would like to just lay a brief foundation for his Exhibit 57, volumes 1 through 3.

Q (BY MR. HUMPHERYS) Mr. Fye, have you, through the course of your work as a consultant in the insurance industry, compiled various information and documents regarding the actions of State Farm which you consider inappropriate?
A Yes, I have three volumes of exhibits that I take with me to depositions that State Farm takes from me, and I call them "Fye Testimony Exhibits, Volumes 1, 2, and 3."
Q And have you gathered all of the information contained in those volumes as documents of State Farm, or other documents, which are relied upon in the field of your profession?
A Yes.
Q Are these documents such that they would describe, or more fully set forth your opinions which you've given to the jury today?
A Yes, they help illustrate the principles I've discussed.
Q Have the examples that we've put on the board and read been the only examples of those points that [134] you've been making from the documents in your exhibits?
A No. I'm just showing a few. There are more examples yet.
Q Mr. Fye, have there been occasions when you have been retained in a State Farm case, and have been provided documents under a protective order?
A Yes.
Q And under a protective order, are you allowed, then, to give those documents out to other people?
A No, I'm not.
Q Have you relied upon documents which you have seen but which you cannot provide to us because of protective orders in other cases?
A Well, no, I'm not permitted to rely on documents that are protected. I'm relying on unprotected documents.
Q All right. Let me see if I can ask it this way. Would the documents that have been restricted in their use in other cases be of benefit to us in this case in supporting your opinions?

A Sure. There are a lot of documents that fill out this big picture.

Q Did we offer to have State Farm waive the protective orders in other cases in order to have them [135] produced in this case so that you would be able to have them provided in their completeness, here?

MR. BELNAP: Your Honor, I'm going to object to that. There's a prior ruling on that, we've gone through and authenticated over 4,000 pages of documents as being copies of originals, and I just don't see where this is going in terms of any relevance on that question.

MR. HUMPHERYS: We made a motion, Your Honor, and the court ordered --

MR. BELNAP: Maybe we ought to approach the bench?

MR. HUMPHERYS: That's fine.

(Side bar conference held out of the hearing of the jury.)

THE COURT: Mr. Humpherys, one thing I wanted the jury to hear is, how long did you say you were going to be?

MR. HUMPHERYS: A few minutes.

THE COURT: I think we're close to concluding this portion of the testimony, so we're going to go a little bit further. But I think the lunch is out there, so bear with us.

MR. HUMPHERYS: Yeah, it should be just two or three minutes, unless we have a major battle on the [136] admission of these exhibits.

Q (BY MR. HUMPHERYS) As it relates to Exhibit 57, volumes 1 through 3, Mr. Fye, are they the only documents you have upon which you have relied, or are they part of them?

A Oh, no, they're just part.

Q And you say you have how many documents that you have seen or retrieved over the years?

A Well, I've got hundreds of thousands, but I don't know how many, exactly. I've said between four and 700,000, but that's my best estimate.

Q All right. And on Exhibit 127, what is listed here has not been available to you in order to produce in this case; is that correct?

A Say that again.

Q Exhibit 127, the list of documents?

A Oh, yes, excuse me.

Q All right.

A That has not been available to me. These ten things.

MR. HUMPHERYS: We will offer Exhibit 157, volumes 1 through 3.

THE COURT: Any objection?

MR. BELNAP: I do, Your Honor. And I think we could save time to explain that at a later hearing [137] when it's convenient to the court. There's a number of things in volumes 1, 2, and 3, that are already into evidence. But there are a number of other things that I think we could quickly point out to the court the problems that exist with them.

THE COURT: Why don't we reserve on that, then, and allow you to do it and finish up the examination, except allowing that to be reserved to come back.

* * *

[138] * * *

THE COURT: Let the record show the jury's left the courtroom. Please be seated. How long do you think it'll take to go into this subject?

MR. BELNAP: I think I can state my position in about two minutes, Your Honor.

THE COURT: Go ahead.

MR. BELNAP: Mr. Fye has created a two-binder set of documents that he calls volumes 1, 2, and 3. He's had these for several years. They're simply, in the terms of an expert, documents that he relies on in all of the cases that he goes around and testifies on.

But just to give you an example of why they cannot come, in our opinion, carte blanche, and in complete form, if you look at these documents, he has summarized the deposition testimony of Ina DeLong, that this court has put a restriction on for trial purposes from her deposition, he's summarized the testimony of [139] Frank Haines, Robert Macherle, James Snow, from cases other than this. Depositions don't come into evidence as exhibits. They may be used for impeachment or other purposes, but not as exhibits, Your Honor.

There's a fire company operation guide in here, and video situations from the fire company that have not been talked about. That's just referring to one of the volumes. If we want to get specific, I could stand up at the bench and show you these, Your Honor.

But my basic position is that these ought to come in on an item-by-item basis if they're not already in evidence. And about half of them are in evidence.

Looking at the other volume, there are some newspaper articles, there are some magazine articles, there are some articles from local newspapers about employment actions involving some State Farm employees that are the subject of a prior motion in limine order by this court.

THE COURT: I understand your point. Mr. Humpherys, how would you meet that? I don't think that, automatically, that the documents that an expert relies upon come into evidence. In fact, that's an explicit part of the operative rule.

MR. HUMPHERYS: Let me respond along these ways. Summaries of depositions are not inappropriate as [140] evidence. We have literally scores of them already into evidence. They are part and parcel of the basis upon which he has reached his opinions. And part of the reason they're being offered is to save trial testimony, which is a legitimate purpose. The rule 1000 of the Utah Rules of Evidence, summaries may be presented in a, records may be presented in a form which can cut through the time that it takes to go through each document, one by one.

This case is so document-intensive that it is nearly impossible to go through them one by one. And the court has indicated, when we were doing our scheduling order a few months ago, that the court would be liberal in allowing summary-time exhibits to cut through the laborious task of going document by document.

THE COURT: We're talking about deposition summaries, now.

MR. BELNAP: That he's created, yes.

MR. HUMPHERYS: Yes.

THE COURT: I look upon that as being quite a different matter than a summary of business records, for example, that we've allowed in, and I would be inclined to allow in if they've been produced.

MR. HUMPHERYS: I appreciate that there is a [141] difference between business records. But Rule 1000, I don't think, distinguishes that. In fact, it even sets forth a different, it says -- Well, let's pull it out. I've got it here.

THE COURT: 1006.

MR. HUMPHERYS: I'm sorry, it's 1006, that's correct. The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. And it's not limited to just business records.

Now, as it relates to the fire company operation guides, I'm happy to set forth either the foundational connection between those, as they may apply to the auto company, or simply take them out of the exhibit.

As it relates to newspaper articles and magazine articles, articles of employment situations, I'll concede that they could be removed. I'm not sure that that is the type of thing that ought to be brought in as exhibits unless, of course, they open the door and want to cross examine him on those articles, then they should be admitted.

But I have no problem removing those from the book. But the mere fact that there are other copies of [142] similar

documents in other exhibits is not a basis. We've had that go on the entire trial.

THE COURT: Well, I don't have a concern with that. It's come up before, and I don't think that we're going to serve our interests by becoming nitpicking about whether something's already come in, in another form in another way. And I don't think that's why you're raising it.

I think he's saying any of those can come in as part of this if that's what you want, but he's raising objections to ones that are not already in for another reason. To cut short, my view is if it's fire company and you can't link it up, as we've said earlier, it doesn't come in.

I'm uncomfortable letting in summaries of depositions, as opposed to other records, and I think they ought to come out. And I think that basically covers the exceptions that Mr. Belnap may have mentioned. So what I'd suggest you do is you go through it and review these exhibits and pull out those, and then if you want to lay a foundation before we come back from lunch on the auto-related fire documents, then we can do that.

MR. HUMPHERYS: All right, thank you.

(Brief recess.)

[143] THE COURT: Back on the record. The record should note the jury's returned to the courtroom and counsel and the parties are present. I think we're --

MR. HUMPHERYS: Your Honor, as a preliminary matter, I think that Mr. Fye has removed those items which have been objected to from his exhibit, and we would now proffer his Exhibit 57 into evidence.

MR. BELNAP: And could I just have a chance to look at that, just compare it with my document, Your Honor?

THE COURT: All right, I'll admit it subject to your review of it.

(WHEREUPON Exhibit Number 57 was received into evidence.)

MR. BELNAP: Thank you.

CROSS EXAMINATION BY MR. BELNAP:

* * *

[145] * * *

Q Okay. I want to show you and the jury a page from the 1991 president's forecast. "Managing our business. Quality products and caring service at the best price possible are the reasons for State Farm's success. Maintaining these basics become more difficult as our organization grows. We must avoid complacency and the bureaucratic attitudes which can accompany bigness.

"Delivering our promise of quality products and service requires State Farm people to consistently perform in a professional way, whether their assignment is directly with customers, or indirectly in a support activity."

Mr. Fye, you have no reason to state, do you, that what's written there was not the intent of the person that wrote it, in fact?

A I disagree with you.

Q Okay. We'll talk about that in a few minutes, then.

A All right.

Q You do not have a problem, do you, Mr. Fye, with an insurance company managing the expense side of its ledger.

A Certainly not.

[146] Q And if the expense side of the ledger is not managed, it, as any other business, can be out of business; isn't that true?

A Correct.

* * *

[147] * * *

Q Mr. Fye, has there ever been a time when a business like State Farm, obviously, as they start a business year, they hope they have a profit, don't they?

A Sure.

Q And in those years when they hope that they have a profit, and that they stay in business, has there been a time when they've had what's known as a net underwriting loss?

A Yes.

Q What does a net underwriting loss mean?

[148] A Basically where the losses and expenses exceed the income.

Q The income from --

A That is the income --

Q From the policy premiums?

A From the solid lines. From the original dollar.

Q Have you seen State Farm's financial statements? I mean they're a matter of public record. They're not secret, are they?

A They're not.

Q Okay.

A They're exhibits, here.

Q All right. You've seen them, then?

A I have.

Q There are a number of years, if you were to look at those years, that State Farm actually experienced a net underwriting loss; isn't that true?

A Yes.

Q And if you experience a net underwriting loss on this example that you've put here, you do not have the 5 cents of profit, do you?

A Correct.

Q And the only way that the business, when you have a net underwriting loss, the only way that this [149] business can stay in business and not be out of business, is if they have made some money on investments to make up this net underwriting loss; isn't that true?

A Yes. And also based on their financial stability.

Q Okay. Let's talk about financial stability. You don't argue with the fact that financial stability is an important factor for an insurance company, especially; isn't that true?

A It is.

* * *

[151] * * *

Q There has been a growth in the number of policies annually that State Farm has written to people throughout the country, isn't there?

A Yes.

Q And although I can't quote you a specific figure, Mr. Fye, would it sound surprising to you, sir, if I were to tell you that as of 1995, there were 37 million automobile policies in the United States written by the auto company?

A That's probably about right.

Q And if I were to represent to you that if you took, and you look at the financial statements -- They are required by law, by insurance accounting principles, to take in all of the assets of all of the other companies that State Farm owns the stock of; isn't that true?

A True.

Q And if you take into account all of the policies that make up the companies that are reflected as assets, as part of these documents that Mr. Humpherys showed you, would it surprise you to learn, Mr. Fye, that as of 1995, there were over 66 million policies in the United States among all of those companies?

[152] A The State Farm group, or all the companies writing auto insurance?

Q No, I'm talking about any State Farm companies that, whose assets are required under insurance accounting to be shown on those financial statements that you have compiled, here. And the exact number, Mr. Fye, is 66,337,187 policies at the end of 1995.

A And that's auto, and excludes homeowners.

Q No, that's all companies.

A Okay, that's -- That's what was confusing me, because I've been --

Q This is auto.

A I've been using 33 million policy holders, and 67 million policies.

Q So you would agree with those numbers, basically?

A Generally, yes. But I thought you were talking about auto only.

Q No. And Mr. Fye, if I were to represent to you that in about the time period of the early to mid-eighties, that there were total policies in all companies of somewhere around 40 million, would you dispute that?

A No. If you represent that to be the case, [153] I'll accept it.

Q Now, Mr. Fye, so that this jury can understand it, for each person that you sell an insurance policy to, there are several things that you have to do to fulfill your obligations to that person, isn't there?

A Yes.

Q Number one, you have to have money right then and there to back up the risk that you have taken; isn't that true?

A That's correct.

Q And let's say that you take in, just for ease of discussion purposes, a $100 premium. And that person goes out and gets into an accident the next day. On insurance accounting purposes, you cannot take in this entire $100 and treat it as income the minute you get it, can you?

A That's right.

Q You have to, under accounting purposes, you have to spread that out over the life of the policy.

A Right. It's earned over time.

Q So the minute you take on a new policy holder, you have to have money to back up that indemnity risk that you're taking on.

A Well, you're talking about two different [154] things, but yes, you do.

Q So as more people desire to be added to State Farm Insurance, either automobile or any other company that's financials are found by accounting rules in those documents, this company has to have the assets to be able to add that person that wants to be insured; is that correct?

A That's right.

Q They have to have the assets to be able to pay if there's a loss; isn't that correct?

A Yes. And as you pointed out, they need a reserve for unearned premium.

Q Now, Mr. Fye, are you aware of the fact that if we just take, for example, a couple of disasters that have hit this country, that those disasters have caused some insurance companies, large insurance companies, to go broke?

A Yes, they have.

Q I want to talk about something else, Mr. Fye. If we take these numbers, each of these policies represent an individual risk of some type, do they not?

A Yes.

Q Mr. Fye, if you take the numbers that you have taken out of those financial statements, would you dispute the fact that, for the people in the auto [155] company that have these policies, that this surplus, as you've called it, represents $326 for each policy holder?

A That sounds right in the ball park.

* * *

Q And as a person who represents yourself to this jury to have expertise in insurance matters, can you explain to the jury what it means when you say "mutual insurance company"?

A It means owned by the policy holders.

MR. HUMPHERYS: Your Honor, may we have a bench conference on this?

THE COURT: You may.

(Side bar conference held out of the hearing of the jury.)

Q (BY MR. BELNAP) Mr. Fye, are there basically two types of insurance structures, or organizations that [156] can be used, commonly?

A Yeah, two, and a third that's pretty common, too.

Q What is the third?

A It's called a reciprocal exchange, or an association of underwriters.

Q But that is more of a guarantee type association?

A It's a loss pooling sort of thing, yeah.

Q And that, I don't want to get into that today, okay?

A I'll go with you.

Q Basically, in this country, if people go out to buy insurance, they will typically be buying from one of two types of companies. Either a mutual or a stock?

A Right, State Farm would be a mutual, Aetna would be a stock company.

Q Now, in a stock company, Mr. Fye, there is a difference between the two organizations in terms of the fact in a stock company, if they want to raise some money, for instance, to gather some money for additional assets or growth of policies or whatever reason, they can go sell some more stock, can't they?

A Correct.

Q In a mutual company, that company, as you [157] indicated, the way it's owned by the policy holders, simply grows as policies are added; isn't that true?

A Yes.

Q And there's not an ability in the structural organization of this company to go out and sell stock, is there?

A Right. You're talking about retaining the money.

Q Right. And so this company, who sells policies to people that own them, has to be able to have the money to back up the promises that are being made to each individual who may have a claim; isn't that true?

A Yes, it is.

Q Are you aware that insurance companies, by state law and regulation, are required to comply with the NAIC, which is National Association of Insurance Commissioners; isn't it?

A I knew that.

Q Okay, that they are required to comply with the accounting standards of the NAIC?

A Well, that's an interesting question. In part they are, yes.

Q Okay.

A And are you referring to solvency ratio standards?

[158] Q I am, Mr. Fye.

A Okay.

Q Isn't it true, Mr. Fye, that one of the early warning signs that the NAIC uses, is if the ratio of premium dollars is out of whack to the risks that are being taken -- That's not a very scientific way to put it. Let me see if I can rephrase it.

A It's easier to say it's a writings to surplus ratio.

Q Okay. If an insurance company does not retain enough surplus in relation to the policies they're taking on, the NAIC has standards by which they say that's an early warning sign of potential insolvency, do they not?

A Right, yes.

Q And they have indicated that any ratio of 3 to 1 or more is an early warning sign of insolvency; isn't that true?

A Yes, and they'd like to see it more in the area of 2 to two and a half to 1.

Q They'd like to see insurance companies without risk to their policy holders, is the bottom line, isn't it, Mr. Fye?

A Yes. But ongoing operations, size of the company, history, there are other factors that enter in.

[159] Q And State Farm's ratio is 1 to 1; isn't that right, Mr. Fye?

A It is.

Q And you would agree that they have both historically performed and paid, even in catastrophic situations, when other companies, some of them, have gone belly up; isn't that true?

A Well, I'll agree with the spirit of your question, but I think the evidence that I've been showing the jury shows that they have not paid when other companies would.

Q I understand you have a difference of opinion from me as to particular cases. And we're going to be talking about that a little more this afternoon.

A Okay.

Q But in terms of the picture that they have met, and they've been there, to be able to meet obligations, historically and over time, they have done so.

A There's no question that any of these claims that were approached with any of these programs could have been paid in full. They have the money to do that, and by your calculation there, they've got three times what they need to do that.

Q Three to one is an early warning sign of [160] insolvency.

A Okay, twice what they need, then.

Q Okay. And that ratio is written for both stock and mutual companies; isn't it, Mr. Fye?

A Generally, yes.

Q And the stock companies that have an ability to have a ratio of 2 to 1 have an ability to go out and raise money through offerings, bonds and otherwise, do they not?

A Yes.

* * *

[161] * * *

Q Mr. Fye, in looking at the records of State Farm, is it true that average paid cost, as a company, has increased, from their own statistics, year after year?

A Yeah, I think so.

Q So if we were to chart a simple bar graph, one axis being the amount of dollars and the other being time -- and I'm not saying that this is necessarily the incline -- but over the years, there has been a steady increase in average paid cost, has there not, Mr. Fye, company-wide?

A Yeah, I've never seen that display, that [162] particular display, but I'd be surprised if there wasn't one like that, yeah.

Q Well, you've indicated to the jury from the auto administrative report that it shows average paid costs, and you've said you've looked at those reports?

A It was not graphed like that. I do have a graph like that from The Insurance Institute of America in Exhibit 57.

Q Okay. But you don't dispute the fact that, even though, in your opinion, State Farm has an agenda to not pay what is owed through the PP&R process --

A Oh, no.

Q -- that those payments have increased over time.

A No, I believe there's been an increase over time.

Q Thank you. Mr. Fye, have you read a number of PP&Rs that indicate, as a manager, say, a divisional claim manager or claim superintendent, "I need to be aware of costs, and control expenses and costs"?

A Yes.

Q And you don't have a problem, conceptually, with a person who is in a management position being responsible for expenses and costs, do you, Mr. Fye?

A No. Not as an abstraction.

[163] Q And Mr. Fye, have you read a number of PP&Rs, in the ones that you have seen and reviewed, where employees have indicated a number of activities that they're going to enter into in an effort to control expenses and costs?

A Yes.

Q Have you read a number of PP&Rs where they've indicated, "I'm going to make good, thorough investigations?

A Yes.

Q Do you find that to be appropriate?

A I find that be appropriate, and potentially inappropriate if it's twisted.

Q Okay. Have you seen PP&Rs where employees have indicated, "I'm going to go out and make prompt contact with people"?

A Yes, we looked at several of those.

Q Is that appropriate?

A It is.

Q Have you seen PP&Rs where it indicates, "I'm going to go out and compile complete medical records and other information necessary to evaluate claims properly"?

A Yes.

Q Is that appropriate?

[164] A That's appropriate.

Q Have you seen PP&Rs where it indicates that, "I am going to negotiate and use negotiation tactics with this claims handling"?

A I haven't seen very many of those.

Q Okay, have you seen any?

A Probably.

Q All right. Is there anything wrong in an insurance settling with negotiating, Mr. Fye?

A No, not as an abstract thought.

Q Okay.

A Adjusters have to be taught that. It's a skill.

Q Mr. Fye, in one of the exhibits that was admitted in this case, there are PP&R manuals, are there not?

A Yes.

Q And have you seen those? They were produced in this case, along with the other thousands of documents?

A The newer ones, yeah.

Q Okay.

A Or do you mean all of them?

Q Have you seen the current PP&R manual that was produced in this case?

[165] A Yes, I have. I think I've got it around here somewhere. It's Exhibit 52.

Q Okay. Do you have any reason, Mr. Fye, to dispute the fact that this manual was adopted, and replaced the prior manual in 1992?

A I don't want to bring up other issues, but PP&R manuals have been requested by many of my clients and they have not responded with this manual until you did recently.

Q Well, do you --

A So I haven't done enough investigation to find out much about how it was put into place.

* * *

[166] * * *

Q (BY MR. BELNAP) Mr. Fye, would you dispute with me, or let me just -- Let's make it easy. Would you assume, for purposes of this question, that people have testified under oath that this document came into existence as the current PP&R manual in 1992?

A Only with the quibble that I brought up.

Q Okay.

A It's making some other lawyers for State Farm not to be as truthful as you.

Q Mr. Fye, in this document that has been produced in this case, does it use an example that reduction of claim payments by a certain percentage are not the appropriate way to proceed?

A That's right, it says that they're completely inappropriate.

Q It does indicate that there are other ways that costs can be appropriately reduced. Does it not?

A Yes.

Q Okay. Mr. Fye, I'm going to show you what the clerk is marking as 128. Mr. Fye, have you ever [167] seen Exhibit 128 before?

A I don't think so.

Q Why don't you take a moment to read that.

A Okay, I've kind of scanned it, here. Do you want me to read it thoroughly?

Q Whatever time you need to familiarize yourself with it, so that you're comfortable that I can proceed.

A Well, what kind of process are we going to go into?

Q Well, I think you'd better read it. It's not that long. It's just a page and a half.

A Okay. I see -- I've read it.

Q Okay. Now, you've indicated that you've read Frank Haines' deposition in this case, haven't you, Mr. Fye?

A Yes, I have.

Q Did he refer to this document in his deposition?

A Not to my knowledge.

Q I'll represent that he did, Mr. Fye.

MR. HUMPHERYS: I object, Your Honor. That was requested during his deposition, and it was not produced.

MR. BELNAP: Your Honor, that would -- This [168] document Mr. Humpherys requested in the deposition, and it has been produced.

MR. HUMPHERYS: It was not produced during his deposition.

MR. BELNAP: That's true, it was not at --

MR. HUMPHERYS: And I don't recall receiving it, but I've received thousands of documents, so it's possible I may have. But we requested it during the depo, and he did not have it during the deposition, and so I object that the representation is inaccurate.

THE WITNESS: Go on.

Q (BY MR. BELNAP) Mr. Fye, would you take a representation that this document was identified as being in existence in Mr. Haines' deposition?

A If you say so, that's fine.

Q Okay. Does the document say --

MR. BELNAP: I'd move for the admission of 128-D.

THE COURT: Any objection?

MR. HUMPHERYS: No, Your Honor.

THE COURT: Received.

(WHEREUPON Exhibit Number 128 was received into evidence.)

Q (BY MR. BELNAP) Does the document say that the purpose of this memorandum is to clarify company [169] intentions regarding use and administration of the performance, planning and review process for the claim representative and claim management?

A It does.

Q Does it go on to provide -- If you could just follow with me, please.

A I will.

Q "Claim performance statistical reports, such as average paid claim indemnity costs, pendings, and expenses are primarily intended for general analysis, and comparison by claim management. While an individual claim representative's cumulative performance in all fifty-eight categories -- " and what's being be referred to there, Mr. Fye, the fifty-eight categories?

A Those are job aspects.

Q We looked at a part of a PP&R that you didn't have all the pages of, where people are evaluated on fifty-eight job aspects.

A Well, there's actually seventy, but that's close enough.

Q Okay. There was seventy, and they've been reduced to fifty-eight. Are you aware of that?

A No.

Q Okay.

A I haven't seen a new one produced.

[170] Q Let me continue. "While an individual claim representative's cumulative performance in all fifty-eight categories listed in the PP&R could potentially have either a favorable or unfavorable impact on division or region statistics, the result would likely be slight and immeasurable. In a very broad sense, the basic purpose of the PP&R is to serve as a development tool for the claim representative as well as periodically assess progress made.

"For these reasons, plus the fact that none of the fifty-eight categories in the form relate specifically to claims statistics, it is inappropriate for either the claim representative or claim management to include reduction of claim indemnity costs, pendings, or expenses as a goal, measure of job performance, or as a specific condition for promotion or merit pay increase." Have I read that correctly?

A You have.

Q Mr. Fye, you have indicated that State Farm has never changed any of its processes. But you would agree, sir, would you not, that Exhibit 128, if you take your opinion, that the PP&R process has been used improperly, that this is certainly taking your opinion, at least, an announcement from State Farm that there must be a change. Isn't that true?

[171] A Yes, this is a very hopeful sign.

Q Thank you. Have you read Mr. Kingman's PP&Rs?

A Yes.

Q There is nothing in his PP&Rs that talks about reducing average paid costs, is there?

A Not to my knowledge.

Q And he's -- You have his PP&Rs, both from Colorado, before he came to this state and ever knew anything about the Campbell case, do you not?

A Let me check.

Q Please do so if you need to.

A I do.

MR. HUMPHERYS: Counsel, we only have his PP&Rs for '92 through '94. Do you have others that we have not been given?

MR. BELNAP: No, I've given you everything that we have, but they include PP&Rs from Colorado.

THE WITNESS: Is that the Frontier Auto?

MR. BELNAP: Yes.

THE WITNESS: Okay, that's a '94, and I've got a '92, but it doesn't say -- Oh, Larramore, South Carolina?

MR. HUMPHERYS: Well, Your Honor, we would request that we get a complete copy of his PP&Rs if [172] counsel is trying to suggest that Mr. Kingman never had indemnity control goals in his PP&R. That's not fair. They've only produced two years' worth, or three, and he's asking him a question regarding whether there was ever an indemnity control in his PP&Rs. We need to have his complete set, then, if that's going to be their position.

THE COURT: I'll allow him to ask the question, but limit it to the PP&Rs that have been produced.

MR. HUMPHERYS: Okay.

THE WITNESS: Okay, from the two years that we have, that was my recollection.

MR. BELNAP: Counsel, I have the documents that were made available, both for your inspection on three trips to our office, and those include a PP&R from 1991 --

MR. HUMPHERYS: Let me look. I don't have that. I have one that was made in '91 for '92.

MR. BELNAP: Covering from December, '91, through '92?

MR. HUMPHERYS: That's the year '92. And then previous that you have?

MR. BELNAP: No.

MR. HUMPHERYS: Okay. How long has he worked [173] for State Farm? Well, never mind.

MR. BELNAP: The court's direction on this, if I could just state, Your Honor, was we were to produce PP&Rs up through 1994.

MR. HUMPHERYS: From '78 to '94, let's make it clear.

MR. BELNAP: That's fine.

MR. HUMPHERYS: And we didn't get any prior to 1992.

MR. BELNAP: You have what you have on Mr. Kingman.

Q (BY MR. BELNAP) My question is, Mr. Fye --

A Yes.

Q Is there any goals in Mr. Kingmans's PP&Rs from the state of Colorado, that he was working in before he ever knew about the Campbell case, to when he comes to Utah as a divisional and ends up with this case?

A Well, assuming that the PP&Rs under his name in this manual are his, there's nothing to identify them as his, that's correct.

Q Well, Mr. Humpherys has seen the PP&Rs at our office with the names on them.

MR. HUMPHERYS: We'll stipulate that his name is on the redacted, I mean on the copy which has been [174] redacted. That's not an issue.

MR. BELNAP: Okay.

THE WITNESS: Okay.

Q (BY MR. BELNAP) Given that stipulation, Mr. Fye, would you agree that there are no cost reduction goals in Mr. Kingman's PP&Rs?

A I do.

* * *

[176] * * *

Q Thank you. Mr. Fye, in your experience as an insurance adjuster, have you ever had anybody come to you in a claim situation and ask for substantially more money than their case was worth?

A I think I remember something like that once or twice.

Q Okay.

A I'm joking. That's happened many times.

Q You certainly don't expect, Mr. Fye, an insurance company, if you have a continuum, here, that's a value of a claim, and the plaintiff, or the person that claims to be hurt, is here, you don't expect an insurance company to pay that if that's not the value of the claim, do you?

A You mean if the demand is within the reasonable settlement range?

Q I'm talking about a demand that is outside of the range.

A Okay, where's -- Well, is the range a reasonable range or not?

Q Okay, let me rephrase my question. Because this -- Let me make it clear, Mr. Fye.

A Okay

[177] Q Let's say this is the range, okay?

A A reasonable range of value?

Q Okay.

A Yes.

Q Let's say we have a plaintiff, as you've encountered before, a person that's been injured, that says, "I want this amount of money." You've had that before, have you not?

A I have.

Q You don't expect an insurance company to step up and meet that demand, just because it's been made, do you? Or just because it's been demanded?

A Just because it's been demanded. Not just because it's been demanded, but there may be some support that would justify it.

Q Okay. You would expect, if a demand is made on a claim, or you have a question about the amount or the injuries or the merits of the claim, that you would want to vigorously investigate that claim to determine where its range of value should sit.

A I'm assuming that we're past the investigation phase, and that both parties are well informed.

Q Well, let's say we're not that --

A You're settling the claim, aren't you?

[178] Q Let's say we're not past the phase. We have a person that comes to you with a new claim and says, "I want to be here." You would certainly --

A What basis do you have for saying that the range is down there, then?

Q You would certainly want to investigate, wouldn't you, Mr. Fye?

A Yeah, I wouldn't have a reasonable settlement range before I talked to the person, or before I knew any of the facts.

* * *

[179] * * *

Q Thank you. One of the PP&Rs that have been produced is of a Michael Arnold. Do you recall that?

A I do.

Q Mr. Arnold, before coming to the state of Utah, was a claims superintendent in California, was he not?

A I don't recall.

Q Would you accept that representation for purposes of time?

A Sure.

Q Mr. Fye, do you see anywhere in his PP&Rs -- He's now a divisional here in Utah, isn't he?

A I don't know.

Q I'll represent to you that he is, Mr. Fye.

A Okay.

Q Do you see anywhere in his PP&Rs where [180] there's a goal of average paid cost reduction?

A I'd have to re-review them. If there aren't, I'll accept your representation and won't go through the time factor.

Q Thank you. There are not.

A Okay.

MR. HUMPHERYS: Your Honor, I have another objection. There are only '93 through '96 years of Mr. Arnold's PP&R that's been produced. I mean we asked for these PP&Rs, and if he's going to ask these questions, we would request that State Farm give us these prior years. They've been with the company for many, many, many years, and it's not right to have him ask these questions --

MR. BELNAP: Would you like a bench conference, counsel? Your Honor?

MR. HUMPHERYS: I would be happy to have a bench conference.

MR. BELNAP: That's fine.

(Side bar conference held out of the hearing of the jury.)

Q (BY MR. BELNAP) Of the PP&Rs that we have produced for Scott Barnwell for the years 1991 through 1994, have you seen any cost reduction goals in those PP&Rs?

[181] A I don't have a recollection of them at the moment, and if you have a list of these things, I'll do it any way you want to, I'll review them all again --

Q I just want to do it quickly, Mr. Fye. So however --

A Can I suggest that you just represent what you know to be the case, and I've looked at these, and I'll go along with your representation.

Q Okay.

A I don't have a specific recollection.

Q Let's talk about Samantha Bird, whose PP&Rs have been produced for 1990 and 1991. Do you recall her name?

A I do know Samantha Bird.

Q She was a claims superintendent here in Salt Lake.

A Right.

Q Have you seen any indemnity cost reduction goals in her PP&R, similar to the ones you've represented to this jury?

A Yes, I saw a memo in her PP&Rs from Bob Noxon warning her that her average paid claim was higher than any of the other units, and to get it back in line.

* * *

[185] * * *

Q Okay. Do you have a problem with controlling costs through training of claims personnel in proper ways?

A Well, I don't have any problem with proper training, but I have a big problem with improper training.

Q Okay. Do you have any problem with using a reinspection program to control costs?

A If the reinspection program doesn't just correct the mistakes that hurt one of the parties, then it's fine. But where the reinspection program, when it finds, let's say, an underpayment to an insured, when it doesn't get that underpayment paid properly, then it's a bad program.

[186] That may be confusing. What happens is that losses are reinspected to see if they're over or underpaid. And some companies, and sometimes State Farm, where there's an overpayment, will get their money back. Where there's an underpayment they'll simply walk away and forget it. In other words, it's a one-way street.

Q Now, with respect -- I think you mentioned Mr. Cutler's PP&Rs.

A Yes.

Q Did you --

A It was up on the board twice, I believe.

Q Did you look at some of the things that he was going to do to attempt to control expense?

A Yeah, I've read a lot of it.

Q Did you have a problem with some of those activities, Mr. Fye?

A What were they?

Q Obtain adequate medical information?

A No problem.

Q Personal contact with people?

A That's good.

Q Using house counsel to reduce costs?

A There is an area where house counsel could be a problem.

[187] Q Okay. Making sure that we pay only reasonable and necessary rental expenses?

A That's a proper goal for a claim operation.

Q Expand the use of suit negotiators in the company that are trained?

MR. HUMPHERYS: Where are you referring to, counsel?

MR. BELNAP: 1282, 1283, PP&R.

MR. HUMPHERYS: Of Grant Cutler?

MR. BELNAP: Yes. 12 --

THE WITNESS: I don't even want to get into that, if you don't mind.

* * *

Q Have you seen the PP&Rs of Frank Fisher for December '80 through 1982, who's now deceased and was a claims superintendent in Utah?

A I don't recall that name.

[188] Q Do you recall any cost reduction goals by percentage basis on his PP&Rs?

A Since I don't recall any of it, I guess not.

Q Okay. How about Elizabeth Bray who's a claims superintendent here in Utah for 1994-'95 PP&R?

A I guess I'd have a better feel for the names if they hadn't been all marked out.

Q Mr. Humpherys has all of them, Mr. Fye. He has --

A Well, I've got all of them, but --

Q We made them totally available to him for inspection. And he took down a log of each PP&R. Has that not been provided to you?

MR. HUMPHERYS: Your Honor, the only documents they produced to me were redacted. I did see the originals to ensure the redacted copies were not altered. But he has not, this witness has not seen the unredacted, because they refused me to allow me to give them to him. So I don't think it's a proper question to ask that of this witness.

THE COURT: Well, if he doesn't know, then he can so state based on --

THE WITNESS: I'm stating so, Your Honor, I'm sorry.

MR. BELNAP: We gave Mr. Humpherys free and [189] unfettered access on three different days to all of the PP&Rs, unredacted. He took a log of them and notes and everything.

MR. HUMPHERYS: That is correct. But I was unable to give them to Mr. Fye for his review. That's the problem. You're asking that question of Mr. Fye.

THE COURT: I think the record's been made. Let's proceed.

Q (BY MR. BELNAP) Have you seen Brad Partington's PP&Rs, a divisional claims superintendent?

A Yes.

Q Did you see any cost reduction goals on his PP&Rs?

A I don't know.

Q I'll represent to you that there are not. Would you accept that representation?

A In the interest of time, sure.

Q Okay. Have you seen Eric Miller's PP&Rs for '93-'94?

A I don't know.

Q Claims superintendent here in Utah?

A I don't know.

Q Did you see a number of PP&Rs from the state of Utah and Mountain States Region?

A I did.

[190] Q Without cost reduction goals in them, Mr. Fye?

A Oh, I suppose so.

Q Okay.

A Certainly a lot of pages without.

Q Have you ever talked to any of these individuals?

A Other than saying hello in the lobby, I don't think so.

Q Have you ever discussed with any of these people that you've testified about, whether or not they have shortchanged anybody with respect to a PP&R goal on a claim?

A Well, that's an interesting tack to take. My testimony has not been directed at individuals. My testimony has been about State Farm's widespread practices.

Q State Farm is made up of individuals, is it not, Mr. Fye?

A It is for a fact.

Q Okay.

A But bringing personality, or these individuals to the forefront is improper, I believe.

Q With respect to the state of Utah, Mr. Fye, is this the only case that you have been retained in as [191] an expert and have reviewed and consulted on?

A In Utah? I believe so.

Q You've never handled a claim in the state of Utah, other than passing through on an airplane accident matter in 1962; isn't that right?

A I believe so. I've taken some statements here or something, but nothing since substantial.

Q You've never been in a State Farm claims office here in Utah, have you?

A No.

Q You've never sat down and talked to any of the people in the Mountain States Region about the practices and policies, have you?

A Am I hearing the beginnings of an invitation, here? No.

Q Mr. Fye, have you?

A No.

Q Thank you. You put up the PP&R on the screen of Mr. Hahn, do you recall that?

A Yes, I do.

Q Is Mr. Hahn a truthful individual?

A I always thought so, but I'm --

Q Have you testified that in your opinion he's a truthful individual?

A Yes, I testified about that thought.

[192] Q Did he, in fact, indicate, Mr. Fye, that as a claim superintendent he was experiencing a number of claims that were being made on what he referred to as a nuisance basis?

A Yes.

Q Do you know what a nuisance claim is?

A I do.

Q Have you ever handled one of those?

A I have.

Q What is a nuisance claim?

A A nuisance claim is usually a minor claim, where it's more, the claimant makes it more attractive to pay out a little money and not contest anything, just to get rid of the claim. But the claim really doesn't have any merit. I'm underlining it.

Q And if the insurance company says, "We're tired of paying nuisance claims, and we're going to take a hard stand on that," do you have a problem with that, Mr. Fye?

A I do have a problem with that when nuisance claims become most claims.

Q On nuisance claims?

A That's what I'm talking about. Because when you start seeing claims as having no merit, and you treat everybody like they're a nuisance claimant, I've [193] got a big problem with that.

Q Didn't Mr. Hahn testify that he was having a problem with nuisance claims in his section?

A At one time he did. I'm not sure whether that was part of the testimony he recanted.

Q Thank you. Have you ever handled what you refer to as a buildup claim, Mr. Fye?

A I didn't refer to it as a buildup claim at the time, but I've handled those that State Farm calls a buildup claim.

Q What is a buildup claim?

A A buildup claim is rooted in old industry habits of paying three times the medical, or five times the medical for a bodily injury claim. So claimants learned that, lawyers learned it, and they started building up the medical expense, because if the adjuster was just going to say three or five times that amount of medical expense, they'd just build it up to a higher level. That's what a buildup claim essentially is.

Q So this is an attempt, through either a claimant, or an attorney and a claimant, to increase the value of a claim by just adding more medical expenses to it.

A Usually where they believe that the negotiating style of the insurance company is going to [194] be a multiple.

Q Now, do you have a problem, Mr. Fye, with an insurance company who believes that there has been a buildup situation on a particular claim, contesting all of those medical expenses that are claimed?

A It depends. Actually, I'm really kind of concerned about the fact, about how that activity gets stimulated. You see, one of the things --

Q So am I. That's why I'm asking the question, Mr. Fye. Do you have a problem, conceptually, with an insurance company who believes there's a buildup claim that has been presented, in contesting the medical expenses and other parts of those claims that may not be valid?

A Well, I'm trying to answer it, if you will let me answer it.

Q I think that calls for a yes-or-no answer.

A Repeat it, please. I want to make sure --

Q Do you have a problem, conceptually, in a buildup situation, as you defined it, Mr. Fye, with an insurance company

contesting those expenses that they don't believe were validly incurred by that person?

A In large part, no. But I do have other concerns about the subject.

Q Mr. Fye, I want to talk to you about a little [195] different area here for a minute, from Mr. Mendoza's deposition. You're aware, are you not, that State Farm is divided into twenty-eight regions; is that correct?

A Yes. And I understand that's changing.

Q And each of those regions has a regional vice president over it.

A Yes.

Q And in the regions, such as Mountain States, under this region there will be a number of claims office operations that are supervised directly by that region; isn't that true? Within the region.

A A number of offices supervised directly by the region?

Q Correct. Let's take the Mountain States for a minute. That Mountain States, within its region, has offices in Utah, Wyoming, and Colorado, and there may be multiple locations in those states?

A Yes, and there may be some other levels of supervision, too.

Q Okay. But you would agree that, in terms of the State Farm organization that it is set up, where the management of these offices takes place in the office, they, in turn, report up to the region; isn't that correct?

A Yes, that's part of the diagram I drew.

[196] Q Thank you. In Mr. Mendoza's deposition, the part that you didn't read, Mr. Fye, and I want to ask you about this, didn't he indicate that if there is a problem in a claim, if the claim results in an excess verdict, or if there's a punitive damage award, that it is handled at the regional level on a claim-by-claim basis?

A Yes.

Q And if it is handled at this level, and investigated, and there's a determination of what happened in those cases, do you fault that, Mr. Fye, for investigating those claims on a local level, rather than up at the board of directors level of the company?

A Well, of course. If a punitive damage award is rendered against a company, that's for the purpose, not of keeping it in a local area.

Q Where does the claim happen, Mr. Fye?

A The claim can happen in Tucumcari, New Mexico, and it may have an impact in Providence, Rhode Island on the way a company approaches its business.

Q I don't want to nitpick with you, Mr. Fye, but isn't it true, sir, that for the most part, the vast majority of claims that end up, for instance, in this court, here in Salt Lake City, involve accidents that would have occurred here in the state of Utah, or [197] involving a Utah insured?

A Another no-brainer, yup.

Q Thank you. And so the claim is handled on a local level, is it not?

A It is, that's right. And that's the point. These claims are all handled on a local level.

Q And if there's a claim problem in the way that claim is handled, is it best solved at a local level, rather than asking the board of directors to solve it? That's a yes-or-no question.

A If it's a punitive damage claim, such as the Campbell claim --

Q That's a yes-or-no question, Mr. Fye.

MR. HUMPHERYS: Your Honor, this is the very scenario that Mr. Christensen and Mr. Kingman went through, where Mr. Christensen said that's a yes or no, Mr. Belnap objected and said he needs to explain it, and now he's doing the very thing that he was critical of Mr. Christensen for.

He needs to be able to explain his answer. That is not fair.

MR. BELNAP: Which Your Honor indicated that if it can be answered yes or no, do so. And that's a yes-or-no question.

THE WITNESS: Please re-ask it, and I'll try [198] to answer it.

MR. BELNAP: Read it back please.

(The pending question was read by the Reporter.)

THE WITNESS: If I understand the syntax, no is the answer. The board of directors should look at punitive damage claims.

Q (BY MR. BELNAP) That's your opinion, then, is that right, Mr. Fye?

A That's my opinion, absolutely that's my opinion.

* * *

Q How many millions of claims does State Farm handle a year, Mr. Fye?

A Fourteen, roughly.

Q And do the vast majority of those claims become resolved without there ever being a lawsuit filed?

A Yes, they do.

Q And of the lawsuits that are filed, Mr. Fye, [199] are most of those resolved without trial?

A Yes.

* * *

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* * *

GARY T. FYE the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and testified further as follows:

MR. BELNAP: Good morning, Your Honor, good morning.

CROSS EXAMINATION BY MR. BELNAP:

Q Mr. Fye, I want to talk to you about PP&Rs for just a moment. Are you warmed up and ready to go?

A Oh, I think so. I hope so.

Q Okay, good. Do you have Jerry Stevenson's PP&Rs?

A Yes, I do.

Q Mr. Fye, could you turn to the 1982.

A Okay. Do you have a page number? Oh, okay. Page number -- Yeah, I got it.

Q Now, who is Mr. Stevenson in relation to this [5] Campbell case?

A I think he was the fellow that took over the first-line supervision from Bob Noxon.

Q He was the superintendent when the case was tried?

A Yes, that's my understanding.

Q Now, in terms of this first page, in January of 1982, he indicates that he's going to, "Improve efficiency and effectiveness of unit personnel performance by bi-monthly meetings and presenting some training videos of hostile people and managing stress"?

A Yes.

Q He's going to do some manpower goals in terms of arbitration, cross training -- That means that he allows other people to be introduced to different parts of the operation; is that right, Mr. Fye? On the cross training?

A That's right.

Q Okay.

A You're just reading those things?

Q Yes.

A Yes.

Q And in terms of cost control, Mr. Fye --

A Well, you need to go back to that other one if you want to talk about cost control.

[6] Q I want to talk about this one, Mr. Fye, when he's a claims superintendent. All right?

A Sure.

Q Okay? Number 6, "Help maintain effective cost controls by attorney defense costs, utilizing house counsel, by FCRs

making regular contacts with defense attorneys on file for settlements." Have I read that correctly?

A Yes, I think so.

Q Okay. You don't have a problem with either of those goals, do you, Mr. Fye?

A Not particularly.

Q Let's look at the next year, "Maintain quality handling of 1983 claims with current number of employees. Have some more training, improve efficiency and attitude."

On the second page of that, does he go on to talk about development and training of personnel?

A Yes.

Q Do you see anything wrong with those goals on the second page?

A No. My problems would be on the first page.

Q On the one I just had up there?

A Yes.

Q Maintain quality handling of 1983 claims? Do [7] you have a problem with that?

A No.

Q Okay. Unit meetings and presentation of training and instructional material? Do you have a problem with that?

A No.

Q Video tape training?

A Nope.

Q Improve efficiency, general attitude?

A Yup.

Q You have a problem with that?

A And look at the top one up there, if you could put it back up.

Q You have a problem with improving efficiency of unit 302?

A Yeah, it says increase efficiency and effectiveness.

Q Okay.

A What do those words mean inside the State Farm culture?

Q According to you what do they mean?

A Yeah. Yeah, according to what we've seen when this guy is --

Q There's not a question pending, Mr. Fye.

A Oh, excuse me.

[8] Q Thank you. Let's go to cost controls, Mr. Fye. The third page of that.

A All right.

Q You don't have a problem with early settlements, do you?

A Sometimes.

Q If they're appropriate settlements, do you have a problem with it, Mr. Fye?

A No.

Q Yesterday you indicated there's no problem with prompt contact; isn't that true?

A That's true.

Q Number two, use of stipulations. Does that mean when a lawsuit's filed, you get a hold of the plaintiff's attorney and see if the case can be resolved before the litigation process gets under way?

A Boy, I wish this one was used more often. Yes, I believe that stipulations should be used very frequently.

Q So you think that's a good goal.

A I think it's a good goal, and it's unrealized.

Q Okay. Number 3, "House counsel answering lawsuits that we may settle." Do you have a problem with that?

[9] A There are some potential ethical problems that have been dealt with in other states about this --

Q Do you have a problem with that?

A Yes, I do have a problem when there's an ethics problem in using house counsel in conflict of interest situations, but it's another subject.

Q Okay. Number 4, "Continued negotiations by an FCR or an SCS." Do you have a problem with negotiations taking place?

A No.

Q Number 5, "Review the possibility of interim billing to defense attorneys." By defense attorneys.

A No, I think when you're an insurance company and you hire people to do work on your behalf, you should pay them while they're, you know, while they're doing the work and need the money.

Q Number 6, "Decrease lawsuits." Do you have a problem with that, Mr. Fye?

A Not a bit.

Q Number 7, "Earlier recognition by CSRs of 103 files that are potential A-100s." Do you have a problem with that?

A No, I don't.

Q Okay.

A That's recognition that the file may have a [10] bodily injury claim instead of just a property damage claim. It's important to recognize that as early as possible.

Q Now, all these years we're talking about is when Mr. Stevenson is the manager of the Ogden claims office; isn't that true, Mr. Fye?

A Austin claims office?

Q Ogden claims office. Isn't that true?

A I don't know the years that he was involved in Ogden.

Q Mr. Fye, yesterday you talked to this jury about a case that happened in Texas. Do you remember the name of that case?

A It's called Poston, P-O-S-T-O-N, versus State Farm.

Q Now, Mr. Fye, can you tell this jury what the difference is between a case where a verdict may be rendered by a jury, and a judgment? Let me start those backwards.

A Sure.

Q Is there any decision in a case that is final and of effect until a judgment is actually signed and entered by a judge in a case?

A No, technically there's a gap in time when the jury renders its verdict, then there's a period of [11] time where the parties

file motions and ask things of the judge, of the court, and finally a final judgment is entered. They're two separate stages of the case.

Q Now, Mr. Fye, as you represented to this jury yesterday, and used the name of that case, by name, Mr. Fye, you know that that case did not result in a judgment, don't you?

A I don't know.

Q Mr. Fye, do you claim, even though you named that case by name, are you now claiming you don't have knowledge of that case?

A Oh, I have knowledge of the case. I don't know what the state of the verdict was.

Q All right. So if I tell you, Mr. Fye --

A Well, I know what the state of the verdict was. I don't know whether it was signed as a judgment.

Q Excuse me. If I tell you, Mr. Fye, that there was no judgment in that case, would you dispute that?

A No, the case was settled after the verdict.

Q You're aware of that.

A I am aware of that.

Q Okay. And so as you told this jury to represent that there was a $100 million result in that case, that is absolutely not the truth as to the resolution of that case; isn't it true, Mr. Fye?

[12] A Mr. Belnap, you're straining my credulity, here.

Q I'm not straining anything. That is, to represent to this jury that there was a $100 million payout, or result in that case, is absolutely not the truth, isn't it, Mr. Fye? That just calls for a yes or no.

A It would be wrong to represent that there was a $100 million payout. It is absolutely correct that there was a $100 million punitive damage verdict.

Q The fact of the matter is, Mr. Fye, is that that case was resolved for a mere fraction, and that there was never a judgment entered; isn't that true?

A I am under a confidentiality restriction, Mr. Belnap, and I feel very uncomfortable making a comment one way or the other about it.

Q All right. But Mr. Fye, yesterday you represented to this jury, in an effort to inflame them on a case that has nothing to do with the Campbell case --

A Mr. Belnap --

Q -- that there was a $100 million result. Didn't you do that, Mr. Fye?

MR. HUMPHERYS: Your Honor, we object, because there was a settlement that was under a [13] confidential gag order. And for him now to be questioning the results of the settlement after that case is improper, when Mr. Fye was duty-bound by reason of that settlement agreement that he cannot talk about it. And it's improper for Mr. Belnap, and that settlement was at the request of State Farm.

MR. BELNAP: That is absolutely false, Your Honor. The plaintiff in that case requested that there be a confidential agreement. And if we've got to bring that person up here we will, because that is the most --

MR. HUMPHERYS: It's irrelevant because he can't talk about it because of the confidential provision of that agreement. And that's what's improper about the line of questioning.

MR. BELNAP: That is also incorrect, Your Honor. Because the agreement says if there are allegations made in litigation that are untrue, that this can be gone into.

THE COURT: Well, counsel, perhaps we ought to examine the record, but I thought his testimony was there was a $100 million verdict.

MR. BELNAP: No, he said a $100 million award, is what he said.

MR. CHRISTENSEN: Isn't that the same?

THE WITNESS: Isn't that the same as a [14] verdict?

THE COURT: Why don't we clarify the record as to what he said? If you felt -- I mean I think you've raised the issue, and I think it's fair examination, but just go through and examine him on what he thought he was saying.

MR. BELNAP: I agree it's fair examination. Thank you, Your Honor.

Q (BY MR. BELNAP) Mr. Fye, are you telling this jury that the plaintiff's attorney in the Poston case --

A It's pronounced "Poston."

Q -- Poston case, did not request and demand that that settlement be confidential?

A I don't know. I've never seen the actual paper work that was involved in that. So I --

Q So you would not dispute that fact, Mr. Fye?

A No, I can't dispute any document that you might have about that. I guess there's only one thing I can dispute.

Q And I'm not interested in that, because there's not a question pending.

A I know.

* * *

[15] * * *

Q Yesterday on your direct examination, you talked about Mr. Summers, and the fact that you believe that he changed a report. Do you recall that testimony?

A Yes, I do.

Q I want to talk about that for a few minutes, Mr. Fye. Because I want to examine what some of the implications of that are, in you opinion. Mr. Summers was the first adjuster on this file, wasn't he, Mr. Fye?

A He was.

Q And as you have chosen to believe that he changed a report, if, in fact, that happened, Mr. Fye, he would be violating

his obligations under Utah insurance law, would he not, to the public generally, and in this case?

A I believe so, yes.

Q And would you agree that he would have an obligation to tell the insurance department that he had allegedly been ordered to do that by this employer, State Farm?

[16] A I don't know that there's a legal obligation to do that. It certainly would be a good idea to do it, except that telling an insurance department about an insurance problem doesn't really do much good, usually. But it is a possibility that if your employer is leaning on you to do unethical or immoral things, that's a place you could go to prevent retaliation, or, you know, it would be a whistle-blower stop.

Q Okay. Mr. Fye, let's have you assume, for purposes of this question, that what Mr. Summers said happened -- which we dispute, obviously -- but I'd like you to assume, as you have, that what he has said happened, for purposes of this question. All right?

A Assume what?

Q Assume that what he said, for purposes of this question, happened. Okay?

A Okay.

Q If that happened, Mr. Fye, and if, let's just say that he told Mr. Campbell about that, okay? Will you assume that with me for purposes of this question?

A I think I'm staying with you.

Q Okay.

A Trying to be awake.

Q If Mr. Summers told Mr. Campbell that he had done that, and that he was in jeopardy in this case [17] because it was a case of liability and potential excess, would you agree, Mr. Fye, that Mr. Campbell would have sufficient information to put him on notice that there were problems? Under that scenario.

MR. HUMPHERYS: Your Honor, I would object on the basis of what is reasonable notice to Mr. Campbell. Mr. Fye can't comment as to what Mr. Campbell would have perceived and understood or not, and that's an improper question to pose to this person.

MR. BELNAP: This witness has been allowed to testify concerning what Mr. Campbell should have been told, and if he had been told those things, the difference that that would have made in terms of his opinions on State Farm and Wendell Bennett.

THE COURT: I'll allow it. Overruled.

Q (BY MR. BELNAP) Mr. Fye --

A I understand the question. Do you -- You won't jump down my throat if I answer it in more than a word?

Q I'll have to see, Mr. Fye. I didn't think I'd jumped down your throat at all. But go ahead.

A Notifying an insured is problematical. We used to have the saying, "You tell them what you're going to tell them, you tell them, and then you tell them you told them." In other words, it takes more than [18] one occasion to make something sink in.

And in a situation like the Campbells, they were, again, bombarded with assurances that their position on this was correct, and they weren't given any of the information that would enable them to realize their culpability. It may not really dawn on them in that situation.

In other words, they've maintained an untenable position with regard to liability from the very beginning, because they've never sat down with their adjuster or attorney and really gone through the facts.

Q Are you finished?

A Yes, I am.

Q Okay, I don't think I got an answer to the question, Mr. Fye.

A Well, you did. The idea is it wouldn't necessarily be efficacious or work to tell somebody like that, in that situation, that one piece of information, and consider that they were fully informed.

Q Okay. Mr. Fye, would you agree that telling them for, Mr. Summers, for purposes of my question, if that was told them, that would certainly be substantially more notice than what you claim to understand occurred in this case. Isn't that true? Yes [19] or no?

A Well, about my claims? I'm not --

Q Your opinions.

A My opinions?

Q Yes.

A Any notice like that would be more than telling them nothing. I'll agree with that.

Q And would you agree, Mr. Fye, under my hypothetical to you, the assumptions based into this question, that a reasonable person who received a telephone call saying, "I was ordered to change reports in this case, and this is a case of liability where you have excess exposure," that that, combined with the fact that Mr. Campbell sat through Slusher's deposition, is certainly significant notice of a potential problem to him; isn't that true? Yes or no?

A There's some truth, and there's also a "no" answer in there. I don't know that I can do better than that.

Q Now, are you aware that Mr. Summers was terminated from State Farm?

A Yes. I don't recall the exact details, but I can remember that there was some friction.

Q Or that he took an early retirement, whichever way he wants to call it, and that that [20] occurred in approximately April or May of 1982?

A Yes, I recall that.

Q Would it be your position, Mr. Fye, that Mr. Summers, after leaving the employment of State Farm, should have reasonably reported to the insurance department these activities that he alleges?

A Well, I'm not going to sit here and fault Mr. Summers.

Q Can you answer that question simply?

A No, I can't. Because it's such a difficult subject.

Q All right, then I'm going to move on, Mr. Fye. Would you agree that after leaving the employment of State Farm, that Mr. Summers would have had an obligation to tell Mr. Campbell what he had done, allegedly?

A There are factors that support maintaining silence and telling. And -- Excuse me, I lost the question.

Q Well --

A If you could repeat it, I'll try to answer it. I'm sorry.

Q Mr. Fye, do you believe Mr. Summers had an alleged ethical obligation, if these matters are believed, to have told Mr. Campbell that, "You're [21] heading down a road, sir, where you're allegedly at fault, and at risk of an excess judgment"?

A There are certainly some ethical considerations that would require that, and there are ethical considerations to a former employer that you don't do that. We all, in the insurance business, have an obligation to the public to maintain confidence in the insurance system.

Q Do you believe, Mr. Fye, that Mr. Summers, if these things are believed, would have had a responsibility to tell the plaintiff's attorneys in the case that he had allegedly changed a report?

A Well, he did so, and I don't fault him for doing that. I think that people go an entire lifetime without ever having to grapple with such a difficult ethical situation. That's why I hesitate to sit here and judge his actions in that respect.

Q Now, when you say he did so, what are you referring to, Mr. Fye? Is that after the verdict, or before the verdict in Logan in September of 1983?

A I don't remember the date of the letter, but I remember that there was some correspondence that Mr. Summers, where it either reported something he'd said, or called, but he did tell somebody about the problem.

[22] Q And is it you understanding that this was after the Campbell verdict?

A I don't presently recall. You'd have to refresh my memory on that date.

Q All right, let me continue.

A Okay.

Q You've indicated that you understood that he did report this to the plaintiffs' attorneys. Do you feel like he had an ethical obligation in doing that?

A It seems to me that he told Mr. Barrett, the plaintiff's attorney for Mr. Slusher.

Q Okay.

A And about an ethical obligation? The highest calling is the truth, and this whole process is to put the facts on the table. And so in that context, there's an ethical obligation not to sit still, keep your mouth shut, while lies happen. So --

Q Do you believe if the attorneys were told, Mr. Fye, as you've indicated you have a recollection on, do you believe that they would have a responsibility, as officers of the court -- Do you know what that means?

A Mr. Belnap, I do know what that means.

Q Thank you.

A You're welcome.

Q As officers of the court, do you believe they [23] would have a responsibility to have reported that conduct, either to the court or to insurance commissioners?

MR. HUMPHERYS: Objection, Your Honor. It's lack of foundation regarding legal responsibilities of lawyers.

THE COURT: Sustained. Lay the foundation.

Q (BY MR. BELNAP) Mr. Fye, what is an officer of the court?

MR. HUMPHERYS: Your Honor, we're dealing with Utah, now, and so I just want to make sure that foundation is laid as to Utah, and back at that time period.

THE COURT: All right.

MR. BELNAP: Your Honor, we've been dealing with this witness in a lot of things other than Utah, as well, but I'll proceed with foundation.

Q (BY MR. BELNAP) What is an officer of the court, Mr. Fye?

A I'm trying to answer it, Mr. Belnap.

Q Okay.

A I know it's perplexing to let me answer, but it interrupts my train of thought. An officer of the court is a qualified, licensed practitioner who basically becomes a part of the administration of [24] justice through the judge and the staff here at the court house, and they have obligations and a canon of ethics that define their behavior, and they're closely regulated in such behavior supervised by the judge. And that's my understanding of what an officer of the court is.

There are some legal, probably, some regulations and administrative guidelines beyond what I know about in Utah, but that's the essence of it.

Q Mr. Fye, do you have an understanding -- and you can just answer this yes or no -- whether or not an officer of the court, if they were to learn of that information, would have a responsibility to either report that to the court, or to an insurance department?

MR. HUMPHERYS: Your Honor, again, I object, lack of foundation.

MR. BELNAP: Your Honor, I'm trying to lay a foundation. I'm asking him for a yes-or-no answer. If he doesn't have an opinion, I'll move on.

THE COURT: All right, I'll allow it. Overruled.

THE WITNESS: I don't have an opinion on that.

Q (BY MR. BELNAP) Okay. Mr. Fye, I want to show you, and put up on the screen a letter to [25] Mr. Humpherys dated December, 1982. Have you ever seen this letter before?

A Yes.

Q Okay.

A That's the one I mentioned.

Q Okay. This letter indicates, "I received a very interesting call from Ray Summers, former adjuster for Campbell's insurance carrier. Mr. Summers advised me that he had been forced into early retirement, and one of the reasons was his sharp disagreement with upper management on how the claim against Campbell should be handled in connection with the Slusher/ Ospital accident."

Going down to the third paragraph, "Mr. Summers is so upset about the whole matter, that he decided to call me. He also has talked to Campbell and advised Campbell of the attitude of the company, and has pointed out to Campbell that if there was an excess judgment against him, he might have some recourse against the company."

* * *

[29] * * *

Q After the letter that I showed you, Mr. Fye, are you aware that Mr. Barrett wrote a letter to Mr. Humpherys in January of 1983 reminding you of the letter we had up on the screen of December of '82?

[30] A I don't remember a proposal about the, proposing deposing the adjuster. Are we talking about the same letters?

Q We are. Does this letter to Mr. Humpherys, of January 24th, 1983, indicate that Mr. Barrett suggests that the deposition of Mr. Summers should be taken?

A Yes, it suggests this.

Q And that he suggests that if they make that information known in that deposition to Mr. Bennett, that it would help their possibilities of getting the case settled?

A Yes, that's what he says.

Q All right. Then let me show you a letter from Mr. Humpherys, February 8th, 1983, to Mr. Barrett.

A All right.

Q Does that letter say that Mr. Humpherys suggests that the deposition not be taken?

A Yes, it says, "Since we're dealing with a personal injury and wrongful death action, I see no need for the deposition of State Farm's adjuster."

Q Let me direct your attention down here.

A Okay.

Q Does the letter go on to talk about a potential bad faith action against State Farm in [31] February of 1983, some seven months before the case was tried?

A Yes, it says, "While it may be irrelevant -- "

Q Start right here, if you could, please.

A Okay. "Before this action," meaning the bad faith action, "can be filed, we would have to obtain a judgment against the Campbells, which judgment would exceed his policy limits. We then obtain an assignment of all claims from Mr. Campbell in turn for an agreement not to execute against him personally, and then we bring a bad faith action against State Farm. In that action, the deposition of the State Farm adjuster would be most appropriate and essential".

Q So as of February of 1983, Mr. Fye, does it appear to you, from reading this correspondence, that the attorneys for Mr. Slusher and Ospital had made a decision that they were not going to make public the information that Mr. Summers had allegedly provided to Mr. Barrett until after the case was tried?

A Yes, there's that -- But you want to remember that in the first letter, Barrett's comment was that Summers had told Campbell.

Q And Summers had told Barrett, as well; is that right, Mr. Fye?

A Yeah.

[32] Q According to Summers, at least, and Barrett.

A But you have a situation where Campbell and Bennett have an attorney-client relationship.

Q And then the letter goes on to provide, "Before the action can be filed they'd have to obtain a judgment," is that right?

A That's correct.

Q And then they would then proceed to get an assignment of the claims from Mr. Campbell in return for agreeing that they would not go against his property; is that correct?

A Yes, that's the typical way these matters are prosecuted, and that's kind of the way it happened.

Q Do you understand, Mr. Fye, that that is what occurred in this case?

A Yes. In rough terms, yes.

Q In this series of correspondence that you saw in this file, Mr. Fye, was there a letter from Mr. Barrett to Mr. Humpherys, again, indicating that, "My thought in getting the deposition of their adjuster currently was primarily to let them know we were aware of the situation, and possibly it would help us to get a reasonable settlement offer from Campbell's insurance carrier." Is that what it says?

A Yeah, uh-huh.

* * *

[34] * * *

Q And the duty to the policy holders in a mutual company is to fairly pay the claims, and not overpay, and be responsible for costs and expenses so that the money is there to meet the obligations of all of the policy holders. Isn't that true?

A Yes, in part.

Q Now, you have indicated that, in your opinion, there have been goals that are not proper with regard to expense control of indemnity costs. Is that basically your opinion?

A Yes, and State Farm's opinion too, now. So that's great.

Q Okay. And Mr. Fye, if these goals were used to shortchange any insured -- Let me rephrase that.

A Okay, it should be be "when," not "if."

Q I understand your opinions, Mr. Fye.

A Okay.

Q I've heard them. Mr. Fye, the fact that there is a goal that is stated in a PP&R to be aware of, or to attempt to control, or attempt to reduce indemnity costs, you cannot say, and you sit here right now, that that necessarily means that the claim of any particular person was not settled in this range of value, can you?

A That question -- Maybe I interrupted your [35] train of thought, but that question came out --

Q You didn't

A Okay.

Q You cannot say, Mr. Fye, that any of these goals resulted in a settlement to a particular insured that was not in this range of value, can you?

A I absolutely, I hope, if I've said nothing else, I have made that clear. The files that I have seen involving the evaluation of injury claims have taken the process you're trying to describe there, and twisted it completely. And I could show you very quickly an example of what I mean.

Q So I'd like a simple answer to my question. Are you saying, then, that of these cases you've seen, Mr. Fye, that they resulted in a settlement not in the range of value? Is that what you're saying?

A Yes, I have seen -- Well, resulted in a settlement, or resulted in a breakdown of communications and litigation? A whole raft of probabilities.

Q Let's take them one at a time. Claims that you have seen, have they resulted in a settlement not in the range of value?

A Absolutely. Do you want an example?

Q And of the cases that you've handled, depending on which affidavit you've looked at, they've [36] been in the range of 100 to 200 cases of State Farm; is that right?

A Well, I don't know the total number. Those, it's been over those numbers.

Q Okay. How many cases, if it's over those numbers, the most recent affidavit that we looked at yesterday was approximately six months old. So how many numbers have you seen of actual cases, Mr. Fye?

A I don't know the exact number.

Q Well, is it over 200?

A Yes.

Q How much over 200 is it? Just give me your best estimate. If you don't have one --

A So that you can later misuse it? I have no estimate. And I'm not given to wild guessing.

Q You're not going to tell this jury, then, how many cases that you've seen, but it's somewhere over 200, then.

A I'll tell this jury I don't know the number today, I'm sorry. I apologize.

Q Okay. And you told us yesterday that State Farm, in any given year, handles approximately 14 million claims; isn't that true?

A Right.

Q And you won't dispute the fact, Mr. Fye, that [37] the vast majority of these claims are resolved without any litigation; isn't that true?

A Yes, that's correct.

Q And you would also agree, Mr. Fye, that when a case cannot be resolved, for whatever reason, short of an actual trial, that in more than 90 percent of those cases, the jury awards a result to the plaintiff less than what the last offer was.

A Since I've never been given a foundation for analyzing those statistics, I'll have to accept your representation. I can tell you that from personal experience, I can give you a case that will analyze, or excuse me, that will explain why that analysis is just chicanery.

Q Mr. Fye, were you here when Mr. Roberts testified?

A No.

Q Were you here when Mr. Brenkman and the other people testified?

A No. What other people?

Q Let me represent to you --

A I was here for some of the testimony.

Q Let me represent to you, my recollection from the testimony of those other individuals was that the vast majority of cases are settled.

[38] I just said that.

Q You don't dispute that?

A No.

Q And that Mr. Fye, have you seen the documents that have been produced in this case, the bodily injury suit reports?

A I haven't had time to review that, I'm sorry.

Q All right, so you've chosen not to look at those?

A Chosen not to, my foot.

Q Mr. Fye, have you --

A I've been deluged with documents right here at the last, right at the last minute, and some I simply haven't been able to get to.

Q Mr. Fye, have you reviewed the testimony of people that indicated how those statistics are kept? That indicate that when State Farm --

A Over the years I have, yes.

Q Okay. And those deposition testimonies indicate that when a decision is made, for whatever reason, that a case is tried, in 90 percent of those cases, the jury returns a verdict less than the last offer. Isn't that the testimony that's been given?

A That's generally the testimony, and it still remains that I have sufficient, insufficient foundation [39] to really take that statistic on.

* * *

[43] * * *

Q When determining whether or not to pay a claim, an insurance company has to keep in mind expenses, does it not?

A Yes.

Q And the affordability of the insurance contract that they are marketing, which is made up of, certainly, expenses that are paid out; isn't that true?

A Yes.

Q And Mr. Fye, with respect to affordability, as you talk to this jury and allege that at the point of the sale, yesterday, there was built in some profit. Do you recall our discussion about that?

A I do.

Q Mr. Fye, an insurance company simply cannot arbitrarily decide one day, "We're going to raise our rates," can they? In most states there has to be permission from the insurance department before a rate increase can take place; isn't that true?

A Sure. And that follows a decision to raise rates. So I guess an insurance company can decide one day to raise rates, and then go through the legal process of doing so.

Q But they may not get an agreed rate increase [44] from the insurance department; isn't that true, Mr. Fye?

A Well, that's correct, they may not.

Q And so if they do not pay attention to expenses, and pay attention to paying claims within a range of value, and not paying claims that are meritorious, or unmeritorious, and other problems, they can create for themselves a factor where they are at a tremendous loss situation without an ability to gain additional revenue; isn't that true?

A That's true. If you overpay everything, it's not going to be good in the long run.

* * *

[48] * * *

Q Mr. Fye, do you recall seeing a 1981 president's forecast in this case?

A I think so.

Q Would you agree, as we talked yesterday, that in 1981, this document would have been written without the intention on the part of the president that it was going to be presented in this case as evidence?

A Yes.

Q Let me read to you from the president's forecast in 1981, which would have been -- It was written July, 1981.

[49] A All right.

Q And that would be, at that time, in forecasting for the coming year, when the Campbell case was in process; isn't that true?

A Did you say January of '81?

Q July, 1981?

A July of '81, that's right.

Q Forecasting into the next year, when the Campbell case was in process; isn't that true?

A Right. This would have been two months after the Campbell accident.

Q "Our results continue to reflect the careful management of our business. Developing and carrying out our plans that don't compromise the basics of our business include a solid underwriting and pricing balance, and a proven approach to marketing." Do you have a problem with that?

A No.

Q "Thus we must continue to emphasize service, quality, and productivity." Do you have a problem with that, Mr. Fye?

A No, good qualities.

A Have you testified before, Mr. Fye, that State Farm provides good claims services to a large number of people?

[50] A I have, indeed. I've testified that, particularly their drive-in claims service, if you have minor auto damage you can drive into a claims service office, into a shed, and if everything goes right and everybody's fair about it, you'll get an estimate that will cover your damage, and you can go to just about any body shop and it'll be accepted, and your claim's done within about fifteen minutes. And there really doesn't, there's no better claims service than that.

Q Mr. Fye, are there a number of articles that you have not read to this jury -- and I realize we only have a certain amount of time -- from the "Obiter Dictum" that emphasize good claims service, good claim handling?

A Sure, yes. And I'll even say that there's a lot of those comments on the PP&Rs, from all that time.

Q And that --

A And also --

Q Would you agree, Mr. Fye?

A And also --

THE COURT: Let him finish.

THE WITNESS: And also, that it's my belief that there are a lot of good people working for State Farm. And I'm not here to impugn people who are doing their job right, and being responsive to the public and to the insureds.

[51] (BY MR. BELNAP) Would you agree, Mr. Fye, that in a number of articles there is an emphasis in claims handling and in controlling costs, to do so by proper investigations?

A I didn't hear the first part. I lost my train of thought.

Q That in claims handling, and controlling of costs in claims handling, that you do so through, one, proper investigations?

A Yes.

Q Number two, prompt contact?

A Yes.

Q Number three, gaining knowledge as an adjuster?

A Yes.

Q Number four, experience in the area?

A Yes.

Q Number five, good customer relations.

A Are you -- Okay, are you stopping there?

Q Do you have a problem with any of those that are mentioned in the State Farm materials?

A No.

Q Are there also materials in the State Farm manuals and materials that indicate that they are encouraged to avoid unnecessary litigation?

[52] A I've seen comments to that effect.

Q And that they are encouraged to protect the buying public from increased cost due to fraudulent claims or non-meritorious claims?

A Yes, there's a great emphasis on resisting non-meritorious claims. In that previous category about resisting litigation, there are comments like that, but there are also goals within the company to encourage litigation. And State Farm, through its subrogation programs, is one of the largest plaintiffs in America.

* * *

[53] * * *

(The jury left the courtroom.)

* * *

THE COURT: We're back on the record, the jury has not been brought before the court, to conduct a conference. Yes?

MR. HUMPHERYS: Your Honor, we just requested to receive a copy of that agreement in the Poston case that Mr. Belnap represented some of the terms in, and I [54] think even, I'm not sure he actually quoted or read from it, but he represented some of the terms and asked questions about it. We consider that a waiver of whatever agreement that they have, and it's improper for him to do that without giving us a copy, and he has just indicated he refuses to give us the copy.

MR. BELNAP: I indicated, Judge, that I wanted to discuss this with you, and to see if it's appropriate. This is a release agreement that I have a copy of, and the release provides that no judgment was entered in the case. It goes on to provide, in the confidentiality section, that the confidentiality --

Let me just read it, "The dollar amount of the settlement paid to the plaintiffs shall remain confidential between the parties and their attorneys." That is the confidentiality agreement. Its goes on to provide other terms with respect to that confidentiality.

But I did not introduce this document into evidence, I did not put it up and show it to the jury. I do not have a problem in showing this to counsel if the court orders us to do so, but I do not want to have it alleged at a later time that we have violated this agreement, which I don't believe we have in any respect, by referring to the case which was brought up by them [55] yesterday.

But if the court would like to direct me to give a copy to Mr. Humpherys, I would be happy to do so, if that's the court's direction.

THE COURT: I think, since it was raised, he at least ought to have the opportunity to review it in conducting their redirect examination. I will so direct, based on the record that's been made.

MR. BELNAP: And the other thing is, Your Honor, they have a transcript that Mr. Humpherys apparently made that they want to refer to, that refers to the jury's answers to special verdict interrogatories. The case was never reduced to a judgment, I think it's totally improper to have even had that case mentioned in this proceeding, Your Honor. And I think the testimony of Mr. Fye ought to be stricken on that.

THE COURT: Are you talking the Singh case?

MR. BELNAP: I'm talking about this Poston case. Never reduced to a judgment, it was resolved at the stage where there were pending motions for a new trial, et cetera. And to refer to it

as some precedential matter I think is highly prejudicial, and that his testimony ought to be stricken. It's absolutely uncontroverted that there was never a [56] judgment in that case.

MR. HUMPHERYS: The issue of whether there's a judgment is irrelevant. We raised the case for the purpose of demonstrating that State Farm refuses to change its course and practices that have been found as improper, deceptive, and illegal, despite large and significant findings by a jury and an award.

Mr. Belnap is suggesting that somehow Mr. Fye raised the Poston case. It was raised by Mr. Mendoza in his testimony, and we raised it for the purpose of demonstrating that State Farm does not alter or change its directions when a court or a jury finds them in bad faith and improper.

It goes to the issue in Crookston regarding what amount, or a consideration of what amount will stop State Farm from engaging in these kinds of activities. Mr. Belnap has chosen to go into this for the purpose of demonstrating, somehow, that the award was, or that State Farm paid less than what the award was. That was not our contention, and so I'm not quite sure how he --

He raises the windmill and then jousts at it. That's not a basis for eliminating the testimony. I don't know what more to say than that.

MR. CHRISTENSEN: Your Honor, I've got one other concern. He not only attacked the witness and [57] suggested he'd lied about his representations of what happened in Texas, he did it in a very loud voice. And in fairness, now that the very strong inference has been made that there was a misrepresentation, we're at least entitled to point out that, in fact, that was what did happen, there was a verdict.

Counsel also suggests that because it wasn't reduced to a judgment it didn't happen. It wasn't reduced to a judgment because it was settled. Now, if it had been set aside by the court, or there had been a judicial determination, that would be different. But there was a jury verdict that was never set aside, and they

have accused this witness of misrepresentation, and it's only fair we get to point out it was, in fact, as represented.

MR. BELNAP: Can I complete the record on this, Your Honor?

THE COURT: You may.

MR. BELNAP: The implication from the testimony which they brought up is that State Farm paid $100 million, and has never learned a lesson from it. But I think, more importantly, for the purposes of the rulings on this case, the Poston case was an uninsured motorist case in a situation where a vehicle that was insured by State Farm had been hit by a truck down in [58] Texas. It resulted in the deaths of two of the people in the car, and suit was brought against the trucking company, and a settlement was entered into against the trucking company, or a verdict, I'm not certain, where they paid their entire limits of a million dollars.

In Texas, there was a question at that time whether or not if you had received an amount of money that was in excess of your own insurance policy, whether or not that brought into play your own uninsured motorist coverage on your own policy. State Farm took the position that since they had been compensated by the trucking company, there was not a basis to pay uninsured motorist in that case.

It was not a pattern or practice case, as this case was. It was simply a first-party uninsured motorist case, where the issue was allowed to go to the jury as to damages that State Farm should pay or shouldn't pay under the uninsured motorist coverage of the policy, and the jury made the decision that they did.

And we think, Your Honor, under 403, and the other cases that we've cited, given the posture of this case as not being a judgment, it was obviously settled, our hands are tied in terms of being able to talk about the amount. But to leave that impression for the jury [59] for the reason they're tendering it is highly prejudicial and should not be allowed.

THE COURT: I think we can go on for a long time on this, and I appreciate comments that are made.

In many ways we're trying to close the barn door after the horse has got out. Those precise facts have not been brought to the court's attention previously, and it seems to me to be certainly something that could well have been gone into with Mr. Fye as a way of attacking the inference he was drawing, or at least was being drawn from that case.

I went back and found the dialogue from the testimony, and I think what he said, he didn't say the amount had been paid, and he didn't say award, and he didn't say verdict. He said there was, he said punitive damages of $100 million, whatever the inference from that is. And I'm sure you've all looked at that same examination, and I don't have the kind of mind that allows me to quote it exactly.

But as I reviewed it, I thought that the examination clarifying what had actually happened in the case was fair examination. I think it's something that could be be asked. But I think that, you know, we have gone far enough in that case where it seems to me that the testimony that was being given on punitive damages [60] is not, in my mind, vitiated entirely by the fact that there's not a judgment rendered. I think there's still probative value in that.

I think that the probative value is certainly clarified to some extent by an examination of what the facts are and what had happened. I don't think there's any question that Mr. Belnap's cross examination made clear that, on the record, that the fact that there was a verdict, but that there was no judgment, and that the settlement was pennies on a dollar, I think that's what was said, and I don't think that there's any question about that. And I think that that serves to assist the clarification that I believe that the defendant would want.

But I believe at this point, sort of to say, "Well, I'm going to strike that in the record and to take it out," now that we've gone this far, is unfair to the plaintiffs, who addressed the issue of the

punitive damage case before the court on the 19th of June. And without a full exposition of what the facts of the case were, we concluded that it was not inappropriate to allow testimony on it, and then testimony proceeded.

So I'm not going to strike the testimony. I will allow plaintiffs to review the agreement, and if they -- I think that if there's a confidentiality order [61] that would not be appropriate to bring in how much -- I don't want to order the breach of that part of it, the dollar amount that you've mentioned, Mr. Belnap, but I think that it is at this point fair game in this case, and some examination can be engaged in to try to precisely put up what happened.

Now, I always feel like juries are more intelligent, and more thoughtful in understanding matters than sometimes given credit under the rules that are invoked to prevent information being provided to them, and believe that the rules properly interpreted here would allow a jury to examine the information. But what I am interested in is the jury gets the full facts before it.

So I don't have a problem with examination which allows that to the point that we can do so short of the breach of an agreement, which I don't see any point in allowing. So I hope that clarifies where I'm at on it. I would, frankly, not think that this trial ought to engage in a great deal more time on that case. I think, just so it's clear, I think, because of the fact that we have gone into this to some degree, I would not have a problem with Mr. Humpherys raising some clarifying questions, and I wouldn't have a problem, either, with Mr. Belnap clarifying what the facts are in [62] the case that would tend to, in your mind, create less relevance to State Farm in terms of the issues that Mr. Fye was suggesting than would otherwise, as you've suggested, from what you've just told me about.

So I'll allow some limited recross on that issue to clarify what the facts are of the case, if Mr. Humpherys doesn't go into the facts in his redirect so that that fact can be brought to the jury, and they can weigh it appropriately.

MR. BELNAP: And certainly, though, Your Honor, in good faith, and as representatives of the court, we all know that $100 million was not paid. If there is an implication, again, hammering that fact that they got hit with $100 million, it hasn't even dented their practices, then it's a misstatement and a mischaracterization that should not be allowed to be argued.

THE COURT: I understand. What we have is a verdict that was $100 million, but no judgment, or settlement was pennies on the dollar. That's now on the record before the jury, and I certainly wouldn't expect Mr. Humpherys is going to try to create an impression different than that, because it's the fact.

And I'm also allowing further examination that the facts of this case are different than this, as [63] well. And I think it's fair to have that before the jury, and I believe it is.

MR. HUMPHERYS: Your Honor, since he's represented that, it's not evidence, he made a representation, which the court knows is not evidence, to the jury, can I at least see the amount so that I know whether it is pennies on the dollar?

THE COURT: If you will respect the fact that it's a confidential amount, and will not be disclosed to anybody, I think that --

MR. HUMPHERYS: I will do that, unless the representation is not accurate, and in which case I will address it with the court.

THE COURT: All right.

MR. BELNAP: Your Honor, the release provides that State Farm, its agents and representatives may be entitled to know the amount of the settlement. The document that I have is redacted on the amount of the settlement. Now, I have personal knowledge that, with the permission and as a representative of State Farm, of that.

But --

MR. HUMPHERYS: Can you represent what that is, then?

MR. BELNAP: I don't think I can without -- [64] I mean I'd love to.

MR. HUMPHERYS: See, but therein lies my problem. He makes a representation to the court, and we have no way to verify that.

MR. BELNAP: Mr. Fye knows it, he said up there that he wouldn't feel comfortable about disclosing it.

THE COURT: That might be a way of satisfying this. Mr. Fye, can you represent that what Mr. Humpherys has said is accurate?

MR. HUMPHERYS: Mr. Belnap?

THE COURT: Excuse me, I'm sorry. Mr. Belnap.

THE WITNESS: Judge, I don't know the precise amount of the settlement, I'm sorry.

THE COURT: I don't want that. I don't even want it on the record. I just want you to be able to say it's pennies on the dollar. The implication is that it's not 95 percent of $100 million, but is a substantially lower amount than that. Would that be adequate, so the inference of pennies on the dollar would not be an improper inference?

THE WITNESS: And if I even say yes to that, am I breaching that agreement? I'm very -- State Farm has been really --

[65] THE COURT: Mr. Belnap has said that --

THE WITNESS: And I believe he breached the agreement. I'm in a much different situation.

THE COURT: Let me just ask you, would you challenge Mr. Belnap's representation based on information that you know?

MR. CHRISTENSEN: Why don't we just leave this alone? We don't want to get Mr. Fye sued, it was obviously a compromise settlement.

THE COURT: That's fine, if Mr. Humpherys is going to leave it alone.

MR. HUMPHERYS: We'll just leave it alone, Your Honor. But I don't want to get in a situation, particularly in light of some of the retaliatory assertions and allegations against Mr. Fye State

Farm has made, somehow to incorporate him in that breach of that agreement. Because he doesn't have the liberty to breach that agreement. It would require consent on the part of both sides before he could do that.

THE COURT: And I'll have to say that I respect Mr. Belnap as an officer of this court, of the court in which I sit, and am comfortable, when he makes that representation, that there's a basis for it.

MR. HUMPHERYS: All right.

THE WITNESS: Thank you, Judge.

[67] * * *

REDIRECT EXAMINATION BY MR. HUMPHERYS:

Q Mr. Fye, I'd like to have you, if you would, please, turn to Exhibit, let's see, 121. Let me hand this to you. This has been previously admitted into evidence. And have you turn to the first yellow tab, and give us the Bates stamp number at the bottom?

A The Bates stamp is 901033.

Q And what is that entitled? Is that the title page of the following outline?

A Yes.

Q And would you read to the jury what the title of that is?

A "Extra Contractual Damage Claims, What They Are, and How to Handle Them."

Q How to handle them?

A How to handle them.

Q And is this case what is called an extra contractual claim?

A Yes, it is.

Q That is it's seeking damages beyond the policy limits.

A That's right.

[68] MR. BELNAP: Counsel, could I ask you, is this in your volume 1, 2, and 3?

MR. HUMPHERYS: No, it is not.

THE WITNESS: No.

Q (BY MR. HUMPHERYS) Let me have you, now, turn to the next yellow tab, and read the Bates stamp on that.

A 901942.

Q I want to put this up on the screen and read it to the jury. Is this still a part of the article of how to handle bad faith, or extra contractual claims?

A That's right.

Q All right. Now, let's read, if you would, here, starting at this paragraph. Would you please read it to the jury?

A Okay. "Most of us consider our income, our debts, our domestic problems, how we spend our money, whether we are keeping up another woman, and things of this nature, to be very personal. We don't like other people asking us questions about these things, and, under normal circumstances, we don't go around asking other people those questions.

"However, when we are faced with what we think is a fraudulent claim, or where a punitive damage count is in a lawsuit, these matters become extremely [69] important to the successful defense of that claim.

"If the insured is paying the expenses of keeping some woman in an apartment, that may be extremely personal business, especially if he is married. But if he submits a claim to us, or charges that we are guilty of conduct for which we should be punished, it is also our business."

Q That's fine.

A Okay.

Q Mr. Fye, has it been your experience, when you've been involved in bad faith claims, that this accurately represents the attitude of State Farm toward you and others involved?

A Sure.

MR. BELNAP: Objection, Your Honor, foundation and relevance.

THE COURT: Overruled.

Q (BY MR. HUMPHERYS) Go ahead and answer again.

A Yes, it is. The inquiry into personal details of one's life is extensive. In my case two law firms have been assigned to basically watch every move I make, and record it and keep a computer record of everything. It's quite a process.

Q And how many times did State Farm take your [70] deposition in this case?

A At least three times.

Q Is it customary to bill State Farm when they take your deposition?

A Yes.

Q And did you bill them, for example, for the last deposition in April of this year?

A I did.

Q Have they paid you yet?

A No.

Q Is that the common practice of State Farm, to agree to pay your expenses for a deposition, take your deposition, and then not pay you?

A It's becoming common, yes.

Q Have they paid you in the past for some?

A Some they've paid, yes.

Q And some have they not?

A That's correct.

Q Now, Mr. Fye --

MR. BELNAP: Your Honor, I'm going to object to that. Because if counsel has submitted us a bill, every bill we have gotten has been paid. Now, if it's been overlooked, I'm sorry. But when we have sat down with his experts, I've even cut a check right then and there, if that's what's desired. So I resent that [71] implication, and every bill that has been sent to us has been paid.

* * *

Q All right. Now, let me ask you about a few things regarding Mr. Belnap's inquiry regarding your finances. I want to ask you why so much of your income, or why is it -- Is it expensive to be an expert against State Farm?

A Very. It's not only time consuming, but I keep a collection of archives of documents, and I'm basically utilizing resources to provide copies to State Farm many times, repetitively, to other parties in litigation. I have quite a bit of travel expense, I have -- I devote a lot of time, a lot of my personal [72] time to becoming knowledgeable about issues, that is preparation time, where I subscribe to and read five newspapers a day, several periodicals, trade periodicals that come monthly or weekly.

Q Trade, meaning insurance periodicals?

A Insurance and business-related things. For every billable hour in this business -- It's kind of like learning how to play the piano. You learn how to play, and then if you perform for an hour it doesn't represent the total effort that's gone into the one hour of playing the piano.

It's -- I'm not complaining, I'm just trying to state what it's like.

Q And I wanted you to explain that.

A It's a very interesting job.

Q Now, regarding your, as you've referred to it, your repository of State Farm documents, you mentioned that you've produced them to State Farm many times in cases.

A I have.

Q Has that been pursuant to State Farm's request that they obtain documents from you?

A Yes. Yes.

Q And what has been your experience in the next case, when those documents are requested from State [73] Farm, that is the same kinds of documents that you have produced to them in a prior case?

A I usually get the same subpoenas and the same requests over and over again.

Q Do they produce the documents when requested that you have given them?

A No.

Q Do they make any representations regarding the existence of those documents in response to formal requests for production of documents through the court system?

A They usually respond that they don't have a copy, and that they've been destroyed.

Q Now, has it been your experience that State Farm destroys these documents which are adverse to their position?

A They do.

Q And has that been a program which has been, you have seen throughout the entire company?

A And throughout the entire time period we're talking about, here.

Q Have you seen records and documents which indicate they destroy documents?

A I have. I have copies of them in Exhibit 53.

Q And are there references to, in these [74] memorandum and other documents, or whatever documents they are, that talk about destruction of documents --

MR. BELNAP: Your Honor, this is beyond the scope of cross.

MR. HUMPHERYS: Your Honor, it has to do with explaining why it costs so much for him to engage in this expert activity.

THE COURT: I'll allow it. Overruled.

MR. HUMPHERYS: I'm not going very far with it, just so the court knows.

Q (BY MR. HUMPHERYS) All right. Do these documents which describe State Farm's destruction policies indicate anything about why they are destroying them, as it relates to these kinds of bad faith cases?

A Yes. The document from here in Utah in 1990 says that they're destroyed so that they won't be produced in litigation against the company.

Q Does it refer to bad faith claims specifically?

A Bad faith claims. In one of the California documents there's a comment that they don't want to write anything down for fear that it'll come back and haunt the company in future litigation over the way claims are being handled.

Q Is there another document referring to the [75] fact that they choose not to defend them, or they don't want to defend their documents to a court?

A Yes.

* * *

[77] * * *

Q Has it been your experience, or do you have an opinion whether or not there would be these adverse documents against State Farm if you did not keep them in a repository?

A There's no question. I was mentioning Darrell Kimbell from Alaska, and why I knew about his promotions and so forth. Documents that I had received in litigation to confirm those statements were in my possession, and had to be returned during the settlement of the case, and they were then destroyed. They were requested again and they were destroyed.

So had I not started maintaining a record of the documents that didn't have to be returned, they wouldn't exist.

Q All right, now, does State Farm often, when they settle these kinds of cases, require that the documents be returned that have been given to you?

[78] A That's right.

Q And was that the case in the Singh trial? Did they, as part of that agreement, request that all of the documents produced be returned?

A No, as a matter of fact, during the Singh settlement negotiations I had not received a copy of the Singh documents, so I didn't have that request in that case.

* * *

Q (BY MR. HUMPHERYS) Mr. Belnap raised the issue, and we have here on this poster that there's nothing wrong with paying within a range of the value. And you indicated you had no problem with the concept, except you were going to explain something, and he cut you off and moved on. Would you now please explain to the jury what you were going to explain?

A Sure. I worked on a case where a young woman [79] got hit, she was riding a small motorcycle, got hit by a State Farm insured and her leg was severely fractured, she suffered disfiguring injuries, lifetime disabilities. She had seventeen operations ultimately. And the value range of her injury was $300,000 to $500,000.

The morning after her second operation, a State Farm adjuster went into her hospital room, ostensibly to pay for the motorcycle, and got a release from this lady for the bodily injury claim for $250. This lady was then promoted to claim superintendent and was giving seminars on how to achieve first call settlements.

I would have had no problem with the discussion of settlement within the fair settlement range. But it doesn't work that way.

Q All right. Now, there was another comment made by Mr. Belnap regarding State Farm's success ratio in their litigation. And you indicated you had some concern about that.

A I mentioned the Weiford case in Alaska. This is a case where a physically active young woman, a jogger, and a kind of a fitness freak, is what they call them these days, I guess, Ms. Weiford was in some kind of an automobile accident that was covered by her State [80] Farm policy. And shortly after

the accident it became clear that her injury was going to involve a certain course of treatment to resolve, and that it had a value of $20,000. And the State Farm file reflected that, that this case is worth $20,000.

$5,000 was offered, and by and large, State Farm stuck on that for three years until an arbitration. And in the arbitration of her case, I think the figure was $19,700 that she won.

Well, just a day or so before the arbitration happened, State Farm said, "Oh, okay, we'll pay you the $20,000." And she said, "No."

This was a winning case. This is one of those wins, the 90 percent that are won. Ms. Linda Weiford put up with this for three years to get the money that everybody knew she was due years earlier.

Q And so by making an offer just a day or so before the arbitration that was just above the award, that was considered a State Farm win?

A That made it a win.

* * *

[83] * * *

Q All right. I want to cover some things that he raised yesterday. When he was talking about -- Well, I'll not turn to his figures. He was asking, is it appropriate to have a company with substantial surplus for purposes of maintaining its ability to pay claims?

A Yes, he was talking about the solvency ratios.

Q And your response was there's certainly nothing wrong with that.

A Right.

Q Now, are you -- Just so that we know, and the jury understands what this is, as it relates to these exhibits of the schedules of State Farm's money, I'm going to just draw your attention to the '95. We have assets of fifty-four, almost $55 billion, and in 1995, a surplus of $25 billion.

Now, in computing that from an accounting standpoint, are the amounts that are set aside to pay the claims which are presently anticipated included within this figure?

A No, no. This figure is after you deduct the liabilities. So you start with the assets, and then you deduct liabilities. Among those liabilities are the [84] monies that are set aside to pay the claims. Not only the claims that are known, but claims that haven't been reported yet, and will probably be reported later.

Q All right.

A So there are billions of dollars that are already set aside to pay claims before you get to this.

Q So this is in addition to?

A That's in addition to, yes.

Q Watch your step. That's not duct tape, that's a real step. Okay. So is it accurate to suggest that this $25 billion in surplus is needed to pay the present claims?

A That's not correct. This is kind of free and clear money. This is net worth. Surplus.

Q Now, was there a period of time in the early nineties when there was a huge and substantial loss to State Farm?

A Sure, Hurricane Andrew was a big loss, the Northridge Earthquake, Hurricane Hugo was in the late eighties, there have been catastrophes.

Q And did one of the officers, I think Bruce Callis, one of the executive vice presidents, refer to that time period as an unparallelled loss to State Farm?

A Yes, the industry was hit with Andrew and Northridge in fairly rapid succession, I think.

[85] Q I'd like to draw your attention to the time period when this occurred, in the 1990 through 1992 period.

A Well, Andrew was August of '92, I believe.

Q Okay. Were there earthquakes before that time, or is it just generally in that time period?

A Well, Hurricane Hugo, I think, was right before that time.

Q Okay. Now, was there any decrease of their surplus more than what's indicated here, about a billion dollars or so, in that unparallelled catastrophe time?

A I hope I don't have the year of Andrew wrong. This would be the decrease, here.

Q Approximately a billion dollars?

A Yes, and in this year there was a decrease also of about $100 million. So if those catastrophes hadn't happened, this progression to that figure would have been reached a lot earlier.

Q Now, based upon the regulations by insurance departments regarding how much surplus a company should have, and the ratio, Mr. Fye, do you have an opinion as to whether or not the surplus of State Farm is excessive, or not excessive in terms of addressing the potential concerns for security and payment of claims in the future?

[86] MR. BELNAP: That just calls for a yes-or-no answer, Your Honor, and then I have an objection.

THE COURT: Yes or no.

THE WITNESS: I've lost the question, I'm sorry.

Q (BY MR. HUMPHERYS) Let me ask the question again. Based upon your experience, education, and your training, Mr. Fye, do you have an opinion whether or not the $25 billion in surplus funds of State Farm would be excessive or not excessive, in terms of addressing the needs to pay claims in the future, and the security of that, the potential claims in the future?

A Yes.

Q Would you please state what that is?

THE COURT: Mr. Belnap?

MR. BELNAP: Your Honor, I'm going to object to this as without foundation, and irrelevant for this witness to testify. This issue has been brought up in front of insurance commissioners and other regulatory bodies which have ruled that the surplus is acceptable, and as a matter of final judgment, and has been appealed and approved. And so for him to say that in his opinion

he doesn't agree with that, there are final judgments in the regulatory arena and the state courts indicating that this is acceptable. And so it's without [87] foundation, it's without merit.

MR. HUMPHERYS: Let me lay a couple of more foundation questions.

THE COURT: All right.

Q (BY MR. HUMPHERYS) Is there anything, Mr. Fye, which, in the regulations of the commissions regarding surplus, which requires too much surplus?

A No.

Q Are there regulations which require a certain amount, as that is a bottom level?

A Well, there are guidelines that Mr. Belnap was pointing out, about three-to-one and two-to-one, and this is more on the order of one-to-one. And it's in that context that I was giving my answer.

Q But in terms of being adequate, certainly this is adequate, you don't disagree with that?

A It's beyond adequate, yes.

Q Now I'd like to have you address whether or not a company needs this kind of surplus in order to respond to possible future claims?

MR. BELNAP: Same objection, Your Honor.

THE COURT: Overruled, I'll allow it.

THE WITNESS: Can I put this on the board?

Q (BY MR. HUMPHERYS) If you'd like, please come up.

[88] A It'll just take a second. In that '95 report, surplus is $25 billion, roughly. And if you had $75 million in premium income, or premium writings --

Q $75 billion?

A $75 billion, you would have a three-to-one writings to surplus ratio, and that would be a solvency problem like Mr. Belnap pointed out.

If you had a two-to-one ratio, that is if you had $25 billion of surplus in the bank, you can write $50 billion in writings, and you're completely solvent, no problem.

Well, what State Farm has, is writings of $24 billion. So if we can just count $1 billion as small change, they have basically a one-to-one situation. That's kind of beyond strong. And the only point being that State Farm could still comply if this surplus figure was $12 billion.

Now, there's another point to be made, here, and that is that these figures that are reported are conservative accounting figures, as if the company had to be broken up tomorrow morning and sold, and they don't reflect truly the real value of the companies as a going concern. And there are other factors that enter into it.

And I'm not suggesting that State Farm, you [89] know, throw away $13 million simply to comply with the two-to-one. It's just that that's how strong their financial situation is.

Q All right, now I'd like to turn our attention to the PP&R issue that was addressed by Mr. Belnap. Do you recall that he had made as an exhibit a memorandum dated September 12, 1994? That was not shown to the jury, but it was read. Let me put that up on the screen.

MR. HUMPHERYS: What exhibit number did you have on that, Mr. Belnap?

MR. BELNAP: I don't remember. 127, would it be?

MR. HUMPHERYS: That sounds about right.

THE WITNESS: It's 128-D.

Q (BY MR. HUMPHERYS) Okay, 128. Now, the date of this memorandum is September 12, 1994.

A Right.

Q Now, he read to us the fact that State Farm was acknowledging that, having a reduced average paid as a goal under the PP&R program was inappropriate.

A Yes, they're saying it's wrong.

Q And they are suggesting that that should no longer be done.

A That's correct.

[90] Q Now, Mr. Fye, in your mind, as you read that, does that indicate that since the PP&R program was instigated in 1979, and the references to reducing average paid claims, what does that indicate to you of the fifteen or so years that they did have average paid claims as a goal?

A It's an acknowledgement that it was wrong.

Q For the fifteen-year period they were doing it?

A That's right.

Q Now, did you -- Have they submitted other documentation acknowledging the same thing, that that was an inappropriate goal-setting device?

A Yes, we've talked about that, Mr. Belnap and I, too, about the 1992 PP&R manual where they gave an example of setting claim reduction goals as being wrong. I think they used the word "wrong" in that context.

Q Now, I'd like to turn to Exhibit 52, which is already into evidence. I just want to show a particular page that has what you have indicated. Let me just have you lay foundation for the 1979 PP&R manual. Did State Farm produce this, to your knowledge?

A Yes.

Q No, let me -- Why don't you find Exhibit 42. They're in a book, there, and it's not fair to ask you [91] questions until you've got that.

A But they did produce a book of PP&R manuals.

Q Prior to producing it in this case -- No, I'm talking about the '79 manual.

A Oh, excuse me. Oh, no, the '79 manual, State Farm didn't produce that.

Q Who produced it?

A John Crowe did.

Q Is that the first time that you had ever seen this manual, in all of the State Farm cases you've been involved in?

A Yes, indeed.

Q And was that 1979 manual an issue in prior bad faith cases that you have been involved in?

A A request for it was, yes.

Q And did State Farm ever produce it in those cases?

A No, they never did.

Q All right. Now, I'd like to have you turn, if you would, to trial page 20 from this manual. Now, just give the jury a little bit of counsel, or excuse me, explanation about this manual, and what purpose it serves, and who it was distributed to, based on your knowledge and information.

A This manual sets out the purposes of the [92] program, you know, to get the individuals working for the organizational goals and so forth, and how to administer the program. And then this particular page is part of a glossary of examples of what you can write on a PP&R form.

Q And that's what job performance objectives means?

A Right.

Q Now, I want to draw your attention to -- Well, why don't you just explain, where in here does it refer to that goal of reducing average paid claims?

A Well, just above the middle perforation, there, it says, "Hold BI paid cost to," blank, "or less, for the year."

Q And is there a reference here to the same effect, "Maintain average paid PIP cost at," blank number, "or less through," year?

A Where are you pointing? Yes, maintain average, PIP is the so-called no-fault or personal injury protection.

Q Are there other references?

A Yes, it talks about property damage somewhere down toward the bottom, it talks about appearance allowances.

Q Right here?

[93] A Right there. It talks about used parts, used like parts right above that, and --

Q There's one here just above, "Hold collision paid costs"?

A Right, at the perforation, "Hold collision paid cost increase to 8.7 percent."

Q Has it been your experience in the training manual, the videos, and so forth, that there are references to the claim reduction goals as set forth in the manuals?

A Yes, and it was in the tape the jury saw also.

Q All right. Now, just for a moment, because Mr. Belnap asked you the question, based on this memorandum that, in 1994, that said, "We're going to discontinue this activity"?

A Yes.

Q Has State Farm discontinued that activity of placing reduction goals?

A No, they have not discontinued the activity.

Q And do you have evidence of that?

A I do.

Q Now, let me refer you now to some of the PP&Rs that were provided to us on a national level, that is the divisional claims managers, and I'm just going to [94] go through these as quickly as we can to save time.

Let's see, the national PP&Rs are Exhibit 50. And I will use the Bates stamp numbers, the first one is Bates stamp 03232. Now, are all of these we're going to look at after 1994?

A Yes, they are.

Q Are some of them even in 1996?

A Yes.

Q All right. We'll go through this, then. Would you please, I draw your attention to number 2. Would you please read that?

A Well, this is number 2 under financial strength and stability, "QRP," that's quality replacement part, that's what State Farm calls after-market parts, "percentages increase to 13.4 percent for the year, which easily exceeded our goal of 10 percent."

Q All right. Now, "exceeded our goal," what would that mean their goal was?

A That the goal was to increase the use of after-market parts, apparently, by 10 percent.

Q All right. Now, I want to draw your attention down here to the BI, it indicates here, and now would you read the sentence immediately below the columns of numbers?

[95] A "This is a review of the average paid losses and these categories that are listed there, bodily injury -- "

Q Average paid losses?

A "Average paid loss, property damage, personal injury protection, uninsured motorist collision all have increases," and the next sentence says, "The combination of this increased severity," which also means everything, "and increasing frequency produces a significant underwriting loss, which must be reversed."

Q Let me go into another one. Bates stamp 03228. I draw your attention now to the sentence that starts, "East Texas." Would you read that?

A This is from December 15th, 1994. After this memo, it says, "East Texas auto and consolidated claims will contribute to the financial stability of State Farm by achieving a goal of 3 percent adjusted operating profit and through managed growth. Some activities in this area will be maintenance of our PPE level, strong expense management, especially in areas such as telephone expense, et cetera."

Q All right. I'm hurrying because I want to make sure that we address what needs to with the other witnesses.

Now, here's one dated February 2, 1995.

[96] MR. BELNAP: Counsel, can I have a copy of that one?

MR. HUMPHERYS: I do have an extra copy.

THE WITNESS: Okay, this is from February of 1995, it's the Dallas Metro Auto.

Q (BY MR. HUMPHERYS) All right, now, the second page --

MR. BELNAP: May I have a copy of that one, too?

MR. HUMPHERYS: I don't have an extra copy of that one. You can look at mine if you wish, or look up on the screen.

Q (BY MR. HUMPHERYS) Drawing your attention now to Roman Numeral II, on financial stability cost control. Would you read the first sentence and subparagraphs A and B.

A "The following are indications of some of the things we are doing to attempt to control costs. A, maximum utilization of quality after market and recycled parts resulting in savings of $6,768,538."

Q What does it mean, "savings"?

A Savings means money not spent.

Q That would have otherwise been spent?

A Right.

Q All right. And the second one?

[97] A "Our emphasis on sub resulted in recoveries in excess of $5.8 million, up 9 percent from 1993 results." "Sub" is an abbreviation of the word "subrogation," which means the insurance company makes claims in place of the insured to get the money back from people.

Q Now I'd like to have you refer to Bates stamp 04071. And this one is dated January 11, 1996. This year?

A This year.

MR. BELNAP: Do you have an extra copy of that, counsel?

MR. HUMPHERYS: I don't, but if you'd like to look at this one --

Q (BY MR. HUMPHERYS) All right, would you read, now, under "projects slash goals."

A Okay. I'm going to have to step forward. I guess I need glasses or something.

Q This is 1996 objectives. This would be the PP&R objectives?

A Right, and it's the claims mission, "We will strengthen the accountability of all claim employees to support the 10-point Erie loss ratio reduction plan," and it talks about our division PP&Rs and so forth.

Q So there's an actual reduction plan, here?

[98] A Right. It says, "Employees will receive constructive immediate feedback upon which to gauge their performance and encourage their development. Accountability is the key."

And then it says, "Projects goals slash ratio reduction plan. The DCSs," that's divisional claims superintendents, "will work to reduce the loss ratio of the division by applying the following programs. One, enforced proactive handling of low impact/soft tissue injury claims, two, increase use of comparative negligence, three, enhance accountability of all employees."

Q Now I'd like to have you focus on Bates stamp 04057 in the same exhibit. Under the heading of "Financial Strength and Stability," under subpoint B.

A "Both expense and indemnity cost reductions were focused on this year in claims."

Q Now, is this the same thing as cost reduction?

A Yes, that's the same thing.

Q Isn't this the same thing that in the memo said you should not be doing?

A That's right.

Q And this was dated when?

A This is January of this year, 1996, two [99] years, roughly two years after the memo.

Q All right. Focusing your attention to paragraph 2.

A "BI, bodily injury, MPC, medical paid claims, R," I'm not sure what R is, "and UM indemnity costs are down from 1994. The MPC is the most dramatic percentage reduction, down 9.2 percent. A total indemnity cost reduction from these lines of $3,149,575 over 1994 through eleven months."

Q Now, on the next page of that same document, under the general claim statistics.

A It shows average paid BIs, on that line, and it shows a January, 1995 figure of $9,384, July, '95 of $9,396, and December, '95, of $8,982, which is a $402 decrease. And I assume that's a per claim decrease.

Q And this is part of the reduction cost plan on the page before?

A Right.

Q So is this a report of what they're actually doing?

A That's right.

Q Reducing these costs?

A That's right, and the same thing is true, there's another decrease on property damage average paids.

[100] Q Right here?

A Right.

Q Okay. Let me have you now address your attention to Bates stamp 03986. A PP&R which is dated January 25, 1995.

A Right.

Q Would you please read to the jury number 3.

A "Achieve an operating profit of 3 percent or greater in Buckeye." It's a profit goal in the claim department.

Q All right, and under "Communications," would you start here where it says, "Our section."

A "Our section heads will attend a unit meeting in each unit during first quarter to discuss division goals, State Farm 2,000 change, divisional standards/accountability, profitability, answer questions, et cetera."

Q The next, Bates stamp 03982, as part of a 1996 PP&R goal.

A Yes.

Q This is dated January 19, 1996.

A Right.

Q Under management, would you please read the first sentence.

A "The need for personal accountability has [101] never been greater. We will improve our PP&R and goal-setting process to provide for greater objective performance monitoring. Documentation of job performance, positive or negative, for all employees, will be imperative. We continue to use our mission statement to judge performance, et cetera."

Q And then again, referring to the profit?

A "We will achieve a 3 percent operating profit in Buckeye division."

Q And the reference to how money should be spent, here in the last sentence of paragraph 3?

A "We will spend State Farm's money like we would our own."

Q Now, the second page to this PP&R memo, under claims.

A Okay.

Q This is the next page in the Bates stamp order. And starting here with the sentence of, "Additionally"?

A "Additionally, every claim management person has the responsibility to work individually with their staff, new or experienced, to understand their job, know our expectations, and hold them accountable for results on an individual file basis."

Q And the first part of paragraph 3.

[102] A "We will aggressively work to improve our property damage operating results. We will implement those cost-management ideas discussed in recent property costs meetings that relate to our division."

Q Finally, another part of a PP&R, Bates stamp 04700. Under the heading of "Financial Stability," subparagraph D, and the sentence below it, would you please read that into the record?

A "Emphasis will be on ascertainment of 3 percent adjusted operating profit. We have continued to emphasize and strive for 3 percent profit through re-underwriting and cost reduction."

Q Cost reduction?

A Cost reduction.

Q Now, Mr. Fye, have you -- Do you have an opinion whether State Farm has discontinued the use of interjecting profit into the claims handling process through the PP&R program?

A They've not discontinued the use of that.

Q Mr. Belnap asked you regarding payment of claims, that whether or not sometimes plaintiffs ask for more than what they would be entitled to, and you acknowledged that they did.

A Yes.

Q Is the fact that some plaintiffs may ask for [103] more than what they're entitled to, does that justify State Farm refusing to pay fair value to others?

A It does not.

Q Now, we went through some of the PP&Rs, and Mr. Belnap asked you regarding Ms. Bird. You stated that, or he asked you, you didn't find any references to average paid claims in Ms. Bird's PP&Rs, and you responded about a memorandum.

A Yes.

Q And he did not ask you to go into that, so I will.

A Okay.

Q Excuse me, the wrong page. Now, this was not contained in her PP&R, was it?

A It was a separate memo, but it was included in the material that had her PP&Rs in it that I've got.

Q All right. But -- Now, let's talk about who Samantha Bird is.

A Samantha Bird was a claims superintendent working for Bob Noxon, who was the same supervisor that started out on the Campbell case.

Q And he was over Mr. Summers at the time he was ordered to alter the report?

A That's right.

Q Okay. And the subject is average paid [104] claims.

A Average paid costs, right.

Q Excuse me, costs. All right. Now, would you please read underneath the column of numbers, what Mr. Noxon was telling Ms. Bird.

A "As you can see, your average paid cost is much higher than the rest of the division, and, although there may be some logical explanation, I feel this is definitely an area of concern, and one you need to be very aware of. I realize that a few large dollar claims can skew your numbers, but it seems that you may have a problem that you can work on."

Q Have you seen other memoranda like this where State Farm employees are requested to work on reducing average paid claims?

A Well, yes. The PP&Rs contain reviews that have that type of material.

Q Now, this is not a State Farm document, correct? What I mean is, State Farm did not produce this to us?

A They did not produce that.

Q This was from Samantha Bird?

A Correct.

Q He asked you whether Mr. Fisher had any reference to average paid, or reduction of average paid [105] claims, and suggested there was none. I'd like to have you turn -- and you don't need to get it, I'll just put it up on the screen -- from Exhibit 51, volume 2, on page, trial page --

A Mr. Humpherys, you're looking away from me, and I didn't hear the name you mentioned.

Q His name is Frank Fisher.

A Fisher?

Q Yes.

A Thank you.

Q Under his PP&R, page 6015, there's a reference here under 12-17-1980. Nearly all of the coverage cost goals were met for the year.

A Right.

Q Now, I'd like to show the jury what the cost goals were. I'm sorry, but I don't have an overhead of it so I'm just going to have to show it to you this way.

A All right.

Q Are there references to reducing average paid claims on those schedules?

A Yes. It has average paid for categories, here, '79-'80, it has the '79 results, the 1980 goals, and then the first through the fourth quarter. It's just a schedule of goals.

Q And are there indications that their goals [106] were to reduce the amounts from the year before?

A Yes. Well, no -- Oh, yes, in uninsured motorist, there was a reduction goal. In average paid claim it was just about keeping it the same.

Q Okay. And then on the second schedule there are some the same that had reduced?

MR. BELNAP: Are you looking at what's entitled, "Unit 306," trial number 607?

THE WITNESS: Yes. No, 608.

MR. HUMPHERYS: 608. And 607, I think, both of them are.

MR. BELNAP: 607 indicates a goal. That's why I was confused.

MR. HUMPHERYS: I'm mistaken, 608 and 609.

MR. BELNAP: The goal he said on U was reduced, and it's increased.

MR. HUMPHERYS: No, it is not. 1979 was $3,313 --

MR. BELNAP: Can I look at what you've got?

MR. HUMPHERYS: Sure. The year of 1979 was $3,313. The goal for 1980 was $2,500.

MR. BELNAP: Well, look at this document. That's why I'm confused as to what you're showing.

MR. HUMPHERYS: P, for example, on yours is --

[107] MR. BELNAP: $10 less?

MR. HUMPHERYS: Yes.

Q (BY MR. HUMPHERYS) Anyway, there are schedules attached to Mr. Fisher's deposition for cost reduction; is that correct?

A Yes. And -- Correct.

Q We'll address others with the jury with other witnesses, rather than take the time now.

A Okay.

Q Now, Mr. Belnap asked you if you'd talked to the Campbells. You said no. Have you read all of their testimony --

A At that time. I have since met Mr. and Mrs. Campbell here at the trial, and at the first trial.

Q All right. Did you go through and read all of their testimony, and statements and everything that applied back in the 1980 era?

A I did.

Q He asked you if you had reported this conduct to the insurance commissioner, and you said no, you had not. I'd like you to answer why not.

A Well, I believe that it would be inappropriate for me to go off reporting this without my client's instructions to do so. It's not my place to do it. I've been retained for the purpose of being a claim [108] practices expert, and looking at this conduct.

But the compelling reason is that there's nothing an insurance commissioner can do about this conduct, essentially. There is little inclination, there are not enough resources, there are usually budget problems. Reporting matters to the insurance commissioner has limited impact and limited value.

Q Now, he mentioned about a consumer rating. Is the consumer rating that he referred to that you also addressed an accurate way to determine whether State Farm is engaged in unfair claims practices nationwide?

A No, it isn't.

Q Would you please explain why it is not?

A Any rating is basically as good as the sampling, and I know that Consumer Reports is not -- Consumer Reports reporters or investigators have not talked to the people whom I've met who have had litigation involving State Farm. Again, it's a very superficial treatment, and it doesn't go into the depth of inquiry that my work over the last twelve years has.

Q If a consumer has been deceived and does not know that he or she received less than fair value, would there be any way he or she would be able to report a complaint?

A Yeah, most people don't -- Most people never [109] know they're the victim of bad faith conduct. They simply, the adjuster is basically a judge and a jury on countless points that occur during the adjustment of a claim. And if he or she says to the insured, "This is the way we do it," the insured doesn't have a basis to dispute that. So they accept what they're told, and they'll never know to report that conduct.

Q Now, I'd like to, finally, draw your attention to the Poston case, which was referred to.

A All right.

Q Mr. Belnap indicated that there had been no judgment rendered on the verdict.

A That's correct.

Q And that is correct.

A Yes.

Q Now, have you had a chance to review the actual transcript of the judge at the time the verdict was rendered?

A Yes.

Q Was there, in fact, a verdict for $100 million rendered against State Farm?

A Yes.

Q Were they found guilty of bad faith in that case?

A Yes.

[110] Q And did the jury find that State Farm's conduct was done knowingly?

A If you're reading from it, I'll accept that. I don't remember the exact text.

MR. BELNAP: Your Honor, can the record reflect our objection to this, that we discussed with the court?

THE COURT: It may.

Q (BY MR. HUMPHERYS) This is a certified copy of the court's record, signed by the official court reporter, on May 13, 1996. That is she signed it, certifying in 1996.

A Okay.

Q And it's an official record in the Texas court, reading of the jury verdict, December 10, 1993. Okay, now, first of all, was State Farm found to have engaged in unfair and deceptive act or practice?

A Yes.

Q And did this jury find that they did it knowingly?

A It said willingly, knowingly, right. Oh, that's right, knowingly.

Q And the judge -- Why don't you read what the judge said as he was reading the verdict.

A "Thirteen, inquired as to exemplar damages, [111] and I believe I've counted all the zeros folks, and if this adds up right, that's $100 million."

Q Now, Mr. Belnap represented that there was a settlement after that.

A Yes, he did.

Q And he represented that it was settled for what he referred to as a few cents on the dollar. Was that settlement agreement made confidential?

A Yes.

Q And what does it mean when there's a settlement that's confidential?

A It forbids the discussion of it. It disappears, more or less, from people's discourse about it.

Q Now, when we read the testimony from Manuel Mendoza regarding that case, and I asked him, "Did that result in any change in any of kind of course and conduct of State Farm?"

And he said, "No, it didn't on the national level, no on the regional level, no at the divisional level, and so on"?

A Right.

Q Are you aware, now, Mr. Fye, of any change in State Farm's procedures, practices, policies, as you have described them to this jury, despite that [112] memorandum of December of 1994 that we just looked at, are you aware of any changes in the policy of introducing, using and incorporating the profit motive in their claims department?

A No, I'm not.

Q Was there as much evidence in the Poston case about State Farm's practices and policies, wrongful practices and policies, as has been presented in this case?

A No, there wasn't. Not anywhere near.

Q To your knowledge, Mr. Fye, has any other trial that you have been involved in had the extent and scope of evidence regarding State Farm's wrongful practices throughout the country than this case, here before this jury?

A No.

MR. HUMPHERYS: We have nothing further.

MR. BELNAP: May I have a moment, Your Honor?

THE COURT: Mr. Belnap, you're going to give me a proffer what you want to go into. Please have a seat. Thank you.

MR. BELNAP: I'd like to ask Mr. Fye about the Weiford case that was brought up on redirect and wasn't gone into on cross. I'd like to ask Mr. Fye if he has read any materials from a case called VanOrden.

[113] THE COURT: Was VanOrden raised in redirect?

MR. BELNAP: No, it was not, Your Honor. The same issue as Weiford as in the VanOrden case.

THE COURT: Let's hear the testimony on Weiford, and I'll make a decision on that.

MR. BELNAP: I'd like to ask Mr. Fye if he's aware whether or not Mr. Humpherys has claimed that he was not aware of Mr. Summers' alleged changing of the report until after the verdict in Logan in September of 1983.

Then I have a question I would like to ask Mr. Fye that went to this surplus that he brought up as, on the one-to-one ratio, and his opinion that it leaves them in too strong of a position.

And I'd like to ask one question about average paid cost, which was gone into.

THE COURT: All right, proceed.

MR. BELNAP: And then the facts of this Poston case, Your Honor, I'd like to proceed on.

THE COURT: You may do so.

RECROSS EXAMINATION BY MR. BELNAP:

Q Mr. Fye, when you've talked to the jury about the surplus --

A Yes.

[114] Q You're familiar with the fact that that number, if you look at the financial reports that total that up, that is a total surplus from which you deduct what's known as unassigned, or assigned surplus, excuse me, isn't that true?

A Yes.

* * *

Q Of this total surplus, Mr. Fye, a substantial portion of that is assigned to other companies that are required to be found on the financial statements of State Farm Mutual Automobile Insurance Company because of the ownership; isn't that true?

A Yes. I think I know roughly what those percentages are.

Q And that is because, Mr. Fye, as the owner of other companies that they own the stock of, there has to be the financial backing, for instance, if there is a disaster in Florida, which you have testified could reach as high as $14 billion if it was a major, major storm that hit, not just at the end of the state, but right through Miami?

[115] A Well, you've mischaracterized some testimony, there, but I agree that people who calculate that $14 million.

Q Billion?

A Billion dollars, could be right.

Q Okay. And if that were to happen, there is not enough surplus, even at the present time, assigned to these other companies to handle that; isn't that true, Mr. Fye?

A Right, it would have to be shuffled.

Q And there would have to be a calling upon number, substantial numbers, to pay that if that kind of a storm occurred.

A You bet. Anybody that would suffer a $14 billion loss would have to be agile, and it would be difficult to respond rapidly.

Q So when we talk about a surplus of any of these numbers, Mr. Fye, if you take out of this the surplus that is assigned to these other companies?

A Right.

Q For instance, the fire company, who ends up on the financial statements, or the other companies that write business in Texas that insure tornado loss and these other things.

A Right.

[116] Q Then this figure is substantially reduced; isn't it, Mr. Fye?

A Yeah. You basically cut that 25 in half, 12 and a half billion is for the auto company. Of the other 12 and a half, about 9 billion would be for the underlying companies, the subsidiary companies, and about three and a half billion would be for investment fluctuation reserves.

Q Mr. Fye, I want to ask you about the Weiford case that you didn't talk about with this jury. You testified in that case, didn't you?

A Yes, I did.

Q And the Supreme Court of Alaska, where that case was handled, heard an appeal on that case, didn't they?

A Yes, and in part granted it.

Q And struck down the award of any finding of punitive damages in that case from alleged wrongful conduct that you testified to; isn't that true, Mr. Fye?

A That limited portion is true. They upheld that it was bad faith, but didn't award the punitive damages.

Q They upheld the damages, but they struck down all of the punitive damages to which you had testified about wrong practices in that case; isn't that true, [117] Mr. Fye?

A Clarify that. Are you saying that the jury --

Q They struck down the punitive damage award, which you had attempted to support with your testimony of alleged wrongful conduct; isn't that true?

A I don't want to quibble with your wording, sure. I'll go along with you. It's not worded properly, but it's close enough.

* * *

[121] * * *

Q Okay, thank you. One final area, Mr. Fye, on the Poston case.

A All right.

Q In that case, Mr. Fye, that was handled in Texas; is that your understanding?

A Tarrant County, which is Ft. Worth.

[122] Q In that case, Mr. Fye, a family had been involved in an accident and were hit by a truck; isn't that right?

A Yes, and --

Q And they sued --

A The wife and daughter were killed.

Q And they sued the truck that hit them, didn't they?

A I think so.

Q And they received a, either a verdict, or a substantial settlement for the limits of that truck's policy of a million dollars; isn't that true?

A I don't know that that's true.

Q Are you saying you don't know the facts enough to answer that question?

A That's true, I didn't review the facts of the case before I came up.

Q That was a first-party case, wasn't it, Mr. Fye?

A Right. It was under the under-insured or uninsured motorist coverage.

Q Are you aware that in the state of Texas, at or around the time of this case, there had been a question where, if a settlement had already been received that was in an amount more than the uninsured [123] motorist, that the uninsured motorist payments may not be required to be paid?

A Are you referring to a contest over whether there was an offset provision that negated the coverage?

Q No, I'm referring to whether or not you're aware, under Texas law at or around that time, that there had been some law, prior to this case, at some time, that if there had been a settlement already reached, more than the limits of the uninsured motorist, that it was not necessary to pay from that policy?

A In other words, an offset provision.

Q Whatever you want to call it. Are you aware or not aware of that law?

A I'm going to have to say I'm not aware enough of that law to discuss it intelligently today.

Q Okay.

A I've been aware of it in the past.

Q There was no judgment entered in that case; isn't that true, Mr. Fye?

A That's right, just a verdict.

THE COURT: Thank you, Mr. Fye.

MR. HUMPHERYS: Your Honor, I just have one followup on the Weiford case regarding whether --

THE COURT: All right have a seat.

[124] **REDIRECT EXAMINATION BY MR. HUMPHERYS:**

Q Mr. Fye, did the Supreme Court or the appellate court in the Weiford case sustain the finding by the jury that State Farm had engaged in wrongful conduct?

A Yes, that it was bad faith conduct, correct.

Q It simply set aside the punitive damages?

A Correct.

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EXCERPTS OF TRIAL TESTIMONY OF ARCH A. GEDDES, JULY 9, 1996

[Vol. 20, R. 10275, commencing at p. 146]

* * *

ARCH A. GEDDES called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. SCHULTZ:

Q Would you please state your name, your full name and your address for the record?

A My name is Arch A. Geddes, I live at 264 South First West in Preston, Idaho.

* * *

[147] * * *

Q Where did you work before you retired?

A I worked for State Farm Insurance Company.

Q And was that for State Farm Mutual Automobile --

A That's correct.

Q -- Insurance Company? During what time frame, from when to when did you work for State Farm?

A I started in 1970, and worked through 1994. Well, October of '94.

Q And you retired, then, in October of 1994?

A Correct.

* * *

[148] Q Okay. Would you tell the jury the different positions that you held during the years that you worked for State Farm.

A When I started with State Farm I was an estimator, I wrote the estimates on the damaged automobiles. Later on I became a claim representative, and handled the claims.

Q And when you were a claim representative, what types of claims did you handle?

A All types, started with the property damage claims. I later did PIP claims, and for a very short time did some BI claims.

Q When you first began working for State Farm, which office did you work in, Mr. Geddes?

A I started in Murray.

Q And how long did you, approximately how long were you in Murray?

A A year and a half, or thereabouts.

Q Now, did you eventually come and work in the Logan office?

A I did.

Q Approximately when did you start working in the Logan office?

A '74 and five, I was working there a couple of days a week, and about '77 I was there full time.

[149] Q When you started in Logan, were you an estimator, or were you a property damage claims handler?

A I was an estimator when I started there.

Q Before you went to work for State Farm, Mr. Geddes, what type of work were you involved in?

A I owned and operated a body and fender shop in Preston, Idaho.

Q And how long did you own and operate that?

A I owned it for about fourteen or fifteen years. Prior to that I worked as a body and fender man.

Q And in that job, did you certainly have experience handling the repair work on automobiles?

A I sure did.

Q During the time that you worked out of the Logan office, Mr. Geddes, did you become acquainted with Ray Summers?

A Yes.

Q Now, what type of work did Ray Summers do during the time you were there in the Logan office?

A Ray handled the BI claims. He would handle the whole claim, including the property damage in that claim, property damage and bodily injury in the claims that were assigned to him.

Q During the time you worked there while Mr. Summers was there in Logan, did you have any [150] concerns about the way he was performing his job?

A I surely did.

Q What were they?

A He was not honest in what he was doing.

Q What did he do that wasn't honest?

A Well, he lied continually.

Q About what?

A Well, particularly with, in State Farm, he would tell people he was going to call them and he wouldn't, he would tell me he was going to do something and he wouldn't do it. He would be missing from the office for four or five days at a time, and you couldn't even find him.

Q Are you finished?

A Well --

Q Let me go to another question.

A Okay.

Q During the time that you worked there while Mr. Summers was also there, Mr. Geddes, did you have occasion, or did he ever say to you, or complain to you that he was being compelled, or required to do things that he thought was inappropriate, as far as the handling of the files were concerned?

A He did not.

* * *

[152] * * *

Q Mr. Geddes, are you -- You worked for State Farm for about twenty-four years, approximately.

A Correct.

Q And during part of that time, did you handle both first-party and third-party automobile property damage claims?

A Yes.

Q Did you become familiar with the concepts of [153] comparative negligence, comparative fault?

A Yes.

Q Did you have to deal with those?

A Yes.

Q During the time that you worked for State Farm, were you ever instructed or required to change a report so that it didn't say what you had originally stated?

A I never was required to do that.

* * *

[155] * * *

Q (BY MR. SCHULTZ) Mr. Geddes, would you explain how you were trained to handle claims by State Farm?

MR. CHRISTENSEN: Your Honor, I'm going to object to this. It's going way outside the scope of what this witness was designated for, and I wanted to preserve that objection.

THE COURT: All right, overruled.

Q (BY MR. SCHULTZ) Go ahead.

A Yes. I was trained to, when I have a policy holder, they really don't know exactly what they have in their policy. And I was trained to explain the coverages that they have, be totally honest with them, offer anything and everything that is covered under the policy, and make sure they understood it. Be totally honest with them.

Q As far as dealing with either policy holders or claimants, how were you trained to handle claims with respect to what amount was paid, if something was owing?

A Well, you pay them just what was owed, 100 [156] percent of whatever was owed, there.

Q Did you attempt, to the best of your ability, to follow those trainings?

A I certainly did.

Q As far as you are concerned, Mr. Geddes, did you attempt to offer and pay what you felt was fair value on claims?

A Always. And if, for some reason, the claims management people felt like you had overlooked something, they would remind you. They would tell you to go do it.

Q Are you familiar with the concept of like kind and quality parts?

A Yes, I am.

Q Can you explain what that means?

A Well, like kind and quality refers to -- Well, it could either be after-market parts or equivalent parts, which were used parts, off of another car.

Q What, in your experience as an estimator and a property damage claim handler, did you become familiar with what the State Farm policy provided in the way of what a policy holder was entitled to when a part needed to be repaired or replaced?

A On their automobile, yes.

[157] Q Okay. And what did the policy allow for them to receive?

A Well, to put that car back in as good as or better condition than it was in prior to the accident.

Q Let me ask, or give you an example. Let's just assume that a ten-year-old vehicle came in for you to handle a property damage claim on, and there was damage to the

bumper. Does the policy provide that the claim, or that the policy holder, the owner of that car, should get a brand new bumper, or a like kind and quality bumper?

A Well, as an estimator, you would try to put it back as good as it was, or better, and do it in a reasonable way, if possible. So as an estimator, I would call wrecking yards or wherever to see if I could find a used bumper that was just as good, and if that -- or better -- and if I could, that we would use that one.

Q Okay. And let's say the policy holder demanded a brand new bumper on a ten-year-old car. What would the State Farm policy allow to be paid for?

A I would explain to the insured at that time that, "I have located this, it is just as good as the one you had, or better, and that is what we owe you, is to put your car back in as good or better condition than [158] it was. And this is what we'll pay, we'll pay for this bumper, and it's just as good, and we'll guarantee it. If you do want a new bumper you surely can have it, but you'll be expected to pay the difference."

Q Mr. Geddes, in the handling of claim files that you were responsible for, did you ever hear the term used, "purging a file"?

A Yes, I did.

Q And can you explain what that meant?

A Purging a file, it's usually when you were through handling it and it was going to be closed and sent away, and purge meant to clean it up. In many cases you'd get a phone call, and you'd write down the witness' number on a little yellow sticky, or you'd write down a phone number on a slip of paper. And "purge" meant take the yellow sticky out, take the information from it and write it on the accident report where it belongs, and throw the yellow sticky away.

Q Did "purge" mean to destroy material and eliminate it from the file?

A It certainly didn't mean eliminate anything.

Q Mr. Summers has testified, here, Mr. Geddes, regarding some practices that he stated he did while he was working in the Logan office. I want to just read you these practices, and then I want to ask you if you [159] were either taught to do this, or if you actually did it as a claim representative or an estimator.

MR. CHRISTENSEN: Your Honor --

MR. SCHULTZ: At State Farm.

MR. CHRISTENSEN: An objection that this, again, is outside the scope of this witness' designation.

MR. SCHULTZ: Submit it.

THE COURT: Overruled.

Q (BY MR. SCHULTZ) I'm going to try and go through this fairly quickly, so I'll read these and then I'll ask you the question, okay? These are things that Mr. Summers said he did.

Falsifying or withholding documents, photographs, or other evidence from claims files, concealing facts.

Withholding information from insureds and claimants regarding benefits to which they were contractually and legally entitled.

Ignoring inquiries and benefit requests.

Ignoring legal protocol, such as a requirement for court-approved settlements for injuries to minors.

Downplay or ignore liability and/or negligence of insureds to artificially create more [160] advantageous settlement positions.

Handling cases of clear liability only under PIP, no fault, having the effect of limiting insureds' and claimants' recovery to out-of-pocket expenses, and preventing payment of full and fair value of claims.

Downplaying injuries, or concealing the nature and extent of injuries in order to cast doubt on settlement value, especially where claimants or insured is at a disadvantage, such as experiencing financial difficulties or has trouble communicating.

And I'm just going to, for your purpose, I'm going to say downplaying damages to people in vehicles, okay?

Imputing comparative negligence and/or assumption of risk to claimant, even where facts did not indicate such negligence. Where some comparative negligence was indicated, it was greatly exaggerated. Done to improve settlement position.

Sending claimants to their own carrier, even when State Farm's insured's liability is clearly established by the facts, and planning to subsequently deny subrogation to force a lower settlement.

Directing older claimants or insureds to Medicare first so that State Farm paid only excess benefits, although liability was clear and State Farm [161] had first dollar responsibility.

Obtaining first contact or early settlement and release while claimant still under physician's care with a verbal representation that if further complications developed, case would be reopened. Then later standing on release and denying further payment for injuries and damages that were unknown at the time of settlement, but were attributable to the same accident.

Forcing claimants and insureds to litigate, threaten to litigate, or complain to insurance commission before paying claims or disclosing information where liability is clear.

Denying contractual PIP benefits to insureds and no-fault claimants outright, or sending them to the other driver's carriers, and sometimes repeatedly refusing to make no-fault payments.

Intentionally building a case for disclaimer instead of truthfully reporting the facts, hiding, or influencing insured to hide physical evidence.

Unjustly attacking the character, reputation and credibility of a claimant.

Using delay tactics to reduce settlement value, especially where insureds or claimants appeared vulnerable.

[162] Now, Mr. Geddes, you've heard those things.

A Yes.

Q Was that your practice, to do those things while you were working for State Farm?

A All of those things that you read came across to me as dishonest. They were not something that I would do, I would not work for a company that asked me to do them. That is not State Farm's policy.

MR. SCHULTZ: That's all.

CROSS EXAMINATION BY MR. CHRISTENSEN:

Q Mr. Geddes, when you gave your story in this matter under oath, you were still a State Farm employee; isn't that true?

A When I gave the deposition, I was.

Q And you're now on State Farm retirement?

A Correct.

Q Now, your role was mainly property damage at State Farm, wasn't it?

A During the time when Ray Summers was there, yes.

Q You had very little to do with bodily injury claims?

A In later years I did handle some bodily injury claims.

[163] Q But not while Summers was there.

A Correct.

Q In fact, even in later years, you didn't do many, did you?

A That's correct.

Q I think you said in your deposition you'd only done three CLRs in your whole career?

A Something like that, yes.

Q Summers, as far as Cache valley was concerned, was kind of the senior man that handled about all of the big bodily injury cases, wasn't he?

A Yes, he did.

Q Now, you testified in your deposition that it became obvious to you right after you started working in Logan, in the same office with Ray Summers, that he was dishonest, didn't it?

A That's correct.

Q That was the mid-seventies.

A Yes.

Q And if it was obvious to you, it should have been obvious to everybody else working in the office, shouldn't it?

MR. SCHULTZ: Object, calls for the witness to speculate on what somebody else thinks, Your Honor.

THE COURT: I'll allow him to answer it. [164] Overruled.

THE WITNESS: I think the other people in the office knew that.

Q (BY MR. CHRISTENSEN) And, in fact, it was apparent to you that State Farm management knew Ray Summers was dishonest, wasn't it?

A I felt like State Farm management did figure it out, and steps were taken to correct that.

Q Well, now, wait a minute. Didn't you testify that you believed that Mr. Wayne Ballantyne, your boss, Ray Summers' boss, knew Summers was dishonest?

A I don't know what my words are in there, but I believe that Wayne Ballantyne reviewed his claims, and I don't know that he believed he was dishonest.

Q Let's look at your testimony, can we?

A Sure.

Q All right, I'm looking at page 10 of your deposition. This is one of those nice depositions, it's real short.

You were asked the question on line 21, "Can you be more specific about what led you to believe that Wayne Ballantyne knew that Ray was not honest in these types of dealings?"

And your answer was, "Well, I didn't have conversations with Wayne about it, but Wayne was his [165] immediate supervisor, and Wayne reviewed his files, and I felt like Wayne knew what was going on."

Is that still your testimony?

A That's my testimony.

Q Mr. Ballantyne didn't do anything about it, did he?

A Well, I don't know what Mr. Ballantyne did. I know that he would have -- Wayne was his supervisor, Wayne was one step removed from me. And I know that Ray had to review his filings and have his discussions and have his salary reviews with Wayne.

Q Okay. And --

A And I don't know what Wayne did.

Q Now, Marilyn Paulsen, you know Marilyn well, don't you?

A I do.

Q You and she worked in the same office for a number of years?

A Yes.

Q She's testified here that around 1970, she told Mr. Ballantyne Ray Summers was falsifying documents, and he told her that it was good business, it settled claims. Do you have any reason to believe Marilyn didn't tell the truth when she said that?

MR. SCHULTZ: Object, Your Honor, calls for [166] him to speculate or to render an opinion on another person's testimony.

THE COURT: Sustained. Reframe the question.

Q (BY MR. CHRISTENSEN) All right. Well, you saw Ray being dishonest, that was obvious to you right after you started working in the same office, right?

A That's correct. I don't know that he was doing anything dishonest in the files or handling the claims dishonestly. But he was lying every day.

Q Well, wouldn't it make sense to you if he was lying every day, he was lying to people that had claims?

A I don't know what -- I didn't at the time know what he was doing in the files. I knew he was lying to me.

Q Now, Ray Summers mentioned, and Mr. Schultz read you the list, a bunch of dishonest things that he was doing to get better settlements for State Farm. It certainly wouldn't surprise you to know Summers was doing those dishonest things, would it?

A I don't doubt but what Ray Summers was doing those things.

Q Okay. And whose employee was he, all those years he was doing those things?

A He was employed by State Farm Insurance Company, but he wasn't told to do those things.

[167] Q You don't know that.

A I do know that.

Q You were in all of the training meetings and private meetings Mr. Summers had with Wayne Ballantyne and Bob Noxon? Are you claiming that?

A I wasn't in those, but I've been in many, many training meetings with myself and many other people. I have never heard anything like that.

Q State Farm was more than happy to reap the financial benefits of Summers' dishonesty, wasn't it?

MR. SCHULTZ: Objection, Your Honor, that's argumentative.

MR. CHRISTENSEN: Well, he claims he knows.

THE COURT: Overruled.

THE WITNESS: State Farm has a policy to --

Q (BY MR. CHRISTENSEN) Please answer my question. State Farm -- And let me get more specific.

A Okay.

Q Now, you claim you know what Summers was and wasn't doing. Do you know that in a case of Bair versus Christofferson, that State Farm, through Wendell Bennett, was trying to enforce a release that Ray Summers obtained which the claimant said had been obtained through deception?

MR. SCHULTZ: Your Honor, we objected to this [168] earlier today, and I think our objection was sustained.

MR. CHRISTENSEN: I'm testing his knowledge.

MR. SCHULTZ: I object to it again, then, as getting into --

THE COURT: Sustained.

Q (BY MR. CHRISTENSEN) You don't know anything about this case, do you?

A I know nothing about that case.

Q You don't know anything about the Gittens case, do you?

MR. SCHULTZ: Your Honor, I object.

THE COURT: I'll allow him to lay a foundation. If he doesn't know, then that's the answer.

THE WITNESS: I know nothing about those cases.

Q (BY MR. CHRISTENSEN) You wouldn't know anything about most of the cases Ray Summers handled, would you?

A That's correct.

Q Including the Campbell case.

A Including the Campbell case.

Q Now, your testimony in your deposition is that you don't remember any discussion of the Campbell case after the excess verdicts came in around the office, you don't remember anything like that?

[169] A No, I don't.

Q We've got to assume there was some way back in '83; isn't that fair?

A Nothing that I know about.

Q But the Logan office wasn't real big.

A No.

Q The Campbell case had just been tried right there in Logan, and there were some big excess verdicts. You didn't even -- You don't remember even hearing that?

A I don't remember it, no.

Q It's probable that there was discussion that happened, but it's been so long ago you don't remember it; isn't that true?

A I think I would have remembered it. I don't remember anything about it.

Q So your testimony is that the Campbell case, which was one of the biggest out of your office, wasn't it?

A I don't know.

Q Well, it had a fatality and a bad injury. Isn't that a big case?

A That's a big case, but there were lots of them like that. I wouldn't -- I wouldn't know if it was the biggest.

[170] Q It was a big case, and it had just been tried in Logan, and there was a big excess, two big excess verdicts against the policy holder. That's all undisputed. Do you know that now?

A I know that now, and I found that out within the last few years. I didn't know it at the time.

Q You claim you didn't even hear about that for ten years, didn't you?

A Right.

* * *

Q Your deposition testimony was you didn't even remember the Campbell case at all, right?

[171] A That's right.

Q And you weren't even aware the case had been tried.

A That's right.

* * *

[174] * * *

Q Now, do you still have some of your PP&Rs?

A I don't believe I do.

Q When did you throw them away?

A When I retired from State Farm.

Q You kept them up until then?

A I had a -- Yeah, I had a drawer full of things that, and I went through it and decided what I'd [175] need and what I didn't need and discarded it.

Q So you kept them for quite a few years.

A Yes.

Q You kept them for a lot more than two years.

A Well, I don't know. I wasn't a perfect filer. Some things probably were more than two years.

Q Your testimony today is you don't have a single PP&R left?

A I don't have any PP&Rs.

Q Did you ever report Ray Summers to the insurance commission?

A I did not.

Q Did you ever report State Farm to the commission for the deceptions Ray Summers was doing?

A I didn't know that Ray Summers was doing deceptions, and I didn't report it.

Q Now, you talked about using parts from salvage yards on cars. You called those like kind and quality parts?

A Equivalent parts, like kind and quality, yes.

Q When you wrote an estimate using salvage yard parts, you didn't write on the estimate "salvage yard parts," or "junk yard parts"?

A I wrote "equivalent parts" on the estimate.

Q You'd write "equivalent parts."

[176] A Yes. And I'd explain to the policy holder what that meant.

Q Isn't it true you testified that you are a, have a background in body shops?

A Yes.

Q Body shops hate these parts from Taiwan, don't they?

A Some non-certified parts, they do.

Q They call them "Taiwan tin"?

A I don't know what they call them.

Q You've talked about State Farm's practices on using salvage yard parts, and equivalent parts. Are you aware of class actions around the country where State Farm's been sued for not telling people that they were doing that with their cars?

A I'm not aware of that, no.

Q The guarantee that you said State Farm gave, that only came out after some class actions were filed, didn't it?

A I have no idea what you're talking about.

MR. CHRISTENSEN: That's all I have. Thanks.

REDIRECT EXAMINATION BY MR. SCHULTZ:

Q Mr. Geddes, I want to put in context what you read from your deposition about Mr. Summers and [177] Mr. Ballantyne.

MR. SCHULTZ: Your Honor, I'd like to just stand here with him for a minute.

THE COURT: You may.

Q (BY MR. SCHULTZ) Starting on page 7 of the deposition, and on line 11 it says, "Tell me what concerns you had."

Would you read your answer, there?

A My answer was, "Well, I have to tell you a little bit about the operation, what happened. If someone would have an accident, they would drive, if the car was drivable, they'd bring it into the office and I would write a bid on it. And then if it was Ray's file, I would take that person and the estimate over and say, 'Now, this is Ray Summers, and he'll be handling your claim.' And I'd do the same thing with Ellis. If it was Ellis' file I'd take the man and the estimate over to Ellis, and then Ellis or Ray would handle it from that point.

"My big concern, then, was that Ray was very seldom there, and so all I could say was, 'I'll give this estimate to Ray and he'll contact you.'

"And so the next day they'd call me and say, 'He hasn't contacted me.'

"And I'd say, 'Well, he'll get a hold of [178] you.' And that could go on for four or five days, them calling me, because I was the last one they had talked to."

Do you want me to keep going?

Q And Mr. Humpherys' question was, "Your initial concerns, did they go beyond being hard to find?"

A "Well, that's the thing that concerned me, because it affected me."

Q Next question, "From that point on, did you have any concerns, any additional concerns?"

A "Well, yes. I got to where I wondered about his truthfulness, frankly, because this happened dozens of times. Someone would call me, and because I was the last person they had talked to, and they'd say, 'You said Ray would get a hold of us.'

"I said, 'Yeah, Ray has the message. He's supposed to call you.'

"And they'd say, 'Well, he hasn't talked to me.'

"And I'd say, 'Well, I'll tell him to get a hold of you.'

"And this happened several times. And fifteen or twenty minutes after that phone call, Ray called in, and I talked with him and he says, 'Is there [179] anything, you know, what's going on?'

"And I said, 'You need to call so-and-so on the phone.'

"And he says, 'I've already talked to him.'

"And I said, 'Okay.'

"And then in another half an hour the same man called back and said, 'Is Ray there?'

"I said, 'No. But he says he's talked to you.'

"And the man says, 'I have not talked to Ray.'

"And this happened quite regularly, honestly, and so I knew that Ray was lying to me."

Q And was that the context in which you then spoke about thinking of Mr. Ballantyne, that Mr. Ballantyne would know, because he had to review the files?

A That's correct.

MR. SCHULTZ: Your Honor, I need to approach the bench about one thing.

(Side bar conference held out of the hearing of the jury.)

Q (BY MR. SCHULTZ) Just a couple of other things, Mr. Geddes. In addition to what you testified to here about why you felt Ray Summers was dishonest --

[180] Well, let me start over again.

The reason that you gave for being concerned about Mr. Summers' honesty was what you've talked about here as to him being gone, not available when people would call, not based on your review of how he was specifically handling claim files or documents in claim files; is that correct?

A That's correct.

Q And without getting into any detail, Mr. Geddes, did you have certain other dealings, or at least dealing with Mr. Summers outside the scope of the insurance business itself, potential business proposition, which also led you to believe that he was not dealing honestly or speaking honestly?

A Yes, I did.

Q Now, Mr. Geddes, is Wayne Ballantyne retired?

A Yes, I believe he is.

Q Mr. Geddes, if you had been taught or told or compelled or tempted to be compelled to do dishonest acts in your claim handling at State Farm, what would you have done?

A I would have left State Farm immediately.

* * * *

EXCERPTS OF TRIAL TESTIMONY OF SHARON L. HANCEY, JUNE 27, 1996

[Vol. 15, R. 10270, commencing at p. 198]

* * *

SHARON L. HANCEY called as a witness by and on behalf of the Plaintiff, [199] having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:

Q We appreciate your patience out there. Would you state your full name?

A Sharon Lee Hancey.

Q And what is your current employment?

A I am the clerk of the district and circuit courts for Cache and Box Elder County.

Q How long have you been holding this position?

A Since 1989.

Q Just briefly tell us your responsibilities as it relates to keeping track of cases that are filed in Cache County.

A Well, basically, according to the rule, I am the keeper of the records. So any documents or cases filed in those courts that I'm responsible for, I am responsible for all the records. Their safekeeping.

Q Right. Now, we've wheeled in here a bunch of very large books. Are these the official court records up in Cache County?

A They are.

Q And do they have a record of all of the cases that have been, civil cases that have been filed at any [200] given time period?

A Yes, these docket books start at the beginning of time and go until we went to an automated system in 1986.

Q All right.

A Up until that time these docket books were kept for the purpose of entering each and every document in, all activity pertaining to each case filed in the court.

Q Now, last October, I'll represent to you during the trial we had Mr. Wendell Bennett testify that he had tried a jury trial of between six and seven cases per year from 1969 through 1983. During the trial in October, did we ask you to search all of your civil register books to determine how many cases had been actually filed in Cache County by Mr. Bennett or his law firm that he's been affiliated with?

A Yes, you did. There were several law firms, plus Mr. Bennett individually, that I researched.

Q Now, let's go through, so the jury knows, which law firms did you search?

A May I refer to my notes?

Q You bet. Now, these were all law firms where Wendell Bennett was a part of the law firm at some point in time during 1968 through 1983; is that correct?

[201] A That's right.

Q Okay, go ahead and tell us.

A I searched for every case where Wendell E. Bennett, Strong and Hanni, Bennett and Belnap, or Bennett and Associates were listed.

Q All right. And did you then make a list and total of all cases that Mr. Bennett had been involved in?

A Yes.

Q And these firms as you have indicated?

A Yes, I did.

Q Now, these records don't go beyond Cache County, do they?

A No, these are just for Cache County.

Q And so all of the cases that we have in your list are only Cache County cases; is that correct?

A That's correct.

Q All right. And I believe that's what Mr. Bennett said, in Cache County he had tried six to seven per year during that period of time, which is somewhere around 100 cases.

I'll also represent to you that Mrs. Campbell said that Wendell Bennett had told her that he had never lost any case.

MR. CHRISTENSEN: In Cache County.

[202] MR. HUMPHERYS: Thank you.

Q (BY MR. HUMPHERYS) In Cache County. Now, Exhibit 42, Your Honor, has been previously marked, and I believe it's already into evidence. So I would like to put up on the board, Ms. Hancey, and I'd like you to tell this jury what you found regarding those two representations. The first page is simply your declaration; is that right?

A That's correct.

Q And it's from the First District Court stationery?

A Yes, it is.

Q And it's signed at the bottom by you?

A It is.

Q And you have indicated here that you tried to find every case involving Wendell E. Bennett, Strong and Hanni, Bennett and Belnap, or Bennett and Associates, and you did your search in that regard, correct?

A I did.

Q All right. Now, let's go to what you actually found. This is the next page of Exhibit 42. Did you simply list all of the cases that you found with Mr. Bennett's name on it?

A I did.

Q Now, what I would like to do -- Well, let's [203] see, if my counting is right, you've got about sixteen cases that had Mr. Bennett's name involved from the time period of '68 through 1983; is that correct?

A I did this research in October, the end of October, as I recall, and I have not gone back and counted them, but my recollection is sixteen.

Q All right. Now, that's a total number of all cases he has ever filed in Cache County.

A Yes. Up until, I think I went actually up until about 1992 or three.

Q Okay. But we didn't --

A No, you didn't request that.

Q We tried to limit it at '83, right?

A Right, it was a spillover.

Q Okay. Now, and you listed the cases that were both settled and tried.

A Yes.

Q Now, the first one here is Darley versus Snow. That resulted in a jury trial, and he was representing the defendant; is that right?

A Yes, he was.

Q Did he win or lose that case?

A Well, I can't tell from looking at my notes.

Q Okay, there was a judgment entered in favor of the plaintiff for $35,000?

[204] A I don't think that indicates that on my notes.

Q Okay. Can you look up here and see the list? See right here.

MR. SCHULTZ: Is this part of the exhibit?

MR. HUMPHERYS: Yes, this is all part of Exhibit 42.

THE WITNESS: It does show that there's a judgment of $35,000.

Q (BY MR. HUMPHERYS) And so that judgment would be in favor of the plaintiff?

A Yes.

Q So does that mean that Mr. Bennett lost that case?

A Yes.

Q All right, now, the next one is a settlement, the next one I have is Lindley versus Straatman, if I pronounced that right. Okay, Mr. Christensen suggests that we talk about what a stipulation and order of dismissal is. Does that simply mean the case was settled in some form?

A I think, as I went through during my research, I found that many of the cases that were filed were stipulated to, and an order of dismissal signed prior to any trial.

[205] Q Right. And that's what you had "stipulation and order of dismissal"?

A Correct.

Q Typically is that when the parties reach some settlement and they agree to just have the matter dismissed at that point?

A Yes.

Q Okay. So any time we have a stipulation and order of dismissal, that means the parties got together and agreed to dismiss the case.

A Exactly.

Q Okay. Now, Mr. Bennett represented some plaintiffs and some defendants; is that correct?

A That's correct.

Q If his name is on the top, would that mean he is representing the plaintiff?

A Yes, we put, just in the normal usage of things, the plaintiff is always filed first, with his attorney in the proper order.

Q Okay, now, going back to Lindley versus Straatman, which is now the second case that appears to have gone to a verdict, it says "awarded to plaintiff." Now, Bennett was representing the defendant; is that right?

A That's correct.

[206] Q Did he win that case?

A No, he did not.

Q All right, let's go to the next one. Zollinger versus Parkinson. It says a jury verdict awarded to plaintiff. Was he representing the plaintiff?

A No, he was not.

Q Did he win that case?

A No, he did not.

Q Now, looking at the case of Joy and State Farm versus Compass, there was no attorney representing the defendant; is that right?

A Correct.

Q And there was a summary judgment, there was no jury trial in this case, was there?

A No, there was not.

Q Going to the second page, we've covered three cases so far that went to a jury trial, and so far he's lost all three on this list; is that correct?

A That's correct.

Q Now, it looks like the next jury verdict is Frazier versus Wilson. Now, was Mr. Bennett representing the defendant?

A He was.

Q And that was a verdict in favor of the [207] defendant.

A It was.

Q So he won that case?

A Yes.

Q All right, going now to the next one, Taggart versus Crockett, he was representing the defendant, again?

A He was.

Q And that verdict was in favor of the defendant?

A Yes.

Q So he won that one.

A Yes, sir.

Q Now, the next one that we have is Price versus Wagstaff. Here he's representing the defendant?

A Correct.

Q And it says judgment in favor of the plaintiff, or for the plaintiff?

A That's right.

Q Did he win that one?

A No, he did not.

Q Okay, then the remaining two are settlements. The next page, here we have Mr. Bennett representing the plaintiff, Western Casualty Insurance Company?

A Yes.

[208] Q Okay. And the defendant would be, or the attorney representing the defendant was Glen Richman. This was a judgment of no cause of action. What does that mean?

A Well, the court found that there was no cause for this case. There was no legitimate grounds.

Q So does that mean that Mr. Bennett lost this case as representing the plaintiff?

A Yes, it does.

Q All right, and then we have Slusher versus Brooks, Ospital and Campbell, and we know the outcome of that. He was defending, and there was a jury trial with judgments, or excuse me, judgments in favor of the plaintiff?

A That's correct.

Q I think there's two down here, but these were in 1987 and 1991?

A Yes, that's right, and they were beyond the scope of the years you asked me for.

Q All right. Now, again, if my math is right, we had a total of eight jury trials by Mr. Bennett since 1968; is that based on your figures, does that sound right?

A That's correct.

Q And out of the eight trials that he actually [209] took to a jury, he lost six of the eight?

A Right.

Q Ms. Hancey, if Mr. Bennett represented under oath that he tried six to seven cases a year on the average from 1968 through 1983, based on your records, would that be true?

MR. SCHULTZ: Objection, Your Honor, calls for her to comment on another person's testimony.

MR. HUMPHERYS: I'm asking her only to comment on the substance of the fact, whether that fact would be true.

THE COURT: Well, sustained. Reframe the question.

Q (BY MR. HUMPHERYS) All right. I want you to assume, now, that there is some -- Well, let me rephrase it this way. Based on your research and your examination of all of these records, would it be true that Mr. Bennett tried six to seven cases a year from 1968 through 1983?

A Based on my research of the records, from the years which I indicated, that is impossible.

Q And would it be true, based on your research of the records, that he won all of his jury trials in Cache County?

A No, that is not right.

[210] MR. HUMPHERYS: We have no further questions.

CROSS EXAMINATION BY MR. SCHULTZ:

Q Ms. Hancey, are these books handwritten?

A Yes, they are.

Q Longhand?

A Yes.

Q Cursive?

A Yes.

Q Okay. And I understand you to say that you started taking responsibility for these kinds of records in 1989?

A That's when I became the clerk of the court.

Q Were you responsible for writing these records?

A Some of those records I was responsible for writing, because I had been a deputy clerk up until 1989.

Q Okay. And when did you begin?

A 1978, May 1st.

Q Okay. So you wouldn't have been involved in the writing of any of these pages from 1968 up until 1978?

A Not unless there were things that came in to those files, or those cases, after the time when I [211] started to work there.

Q Okay. How many pages are there in each one of these books?

A There's approximately 405 pages. The books are ordered from year to year, and they vary. Sometimes there's a difference of five to ten pages.

Q So it was a pretty big job to read every page.

A Yes.

Q Do you know if Mr. Bennett has come up to Cache County and read through every page of these books to check things?

A Not to my knowledge.

Q Who's your boss as clerk of the court?

A Nelda Hollingsworth.

Q And what's her position?

A She's the trial court executive.

Q Do you do any work for the judges up there in Cache County?

A Well, I'm responsible for five judges as far as calendaring, scheduling, and that sort of thing.

Q And does that include district court judges and circuit court judges?

A And juvenile court.

Q And how was it that you came to make this [212] search last fall?

A I had a request from Mr. Humpherys' agency.

Q Someone from his office asked you to do that?

A It was Mr. Humpherys.

Q Okay. And was there any kind of permission you had to get from anyone in the courts up in Cache County to do this kind of a search and remove the books and bring them down here?

A No. I am the keeper of the records. It is my responsibility. I get these requests often. Not to this volume, but I get this request frequently. Weekly.

Q Have you been given an opportunity to review the testimony that Wendell Bennett gave regarding cases that he handled in Cache County?

A No, I was not.

Q Are you aware that he has testified about cases that he recalls handling in Cache County with other lawyers who are not on your list?

A No, I'm not aware of that.

Q Do the books that you brought here into the court today include cases tried in all levels of courts in Cache County?

A No, that was not what my request was for. It was for the district court in Cache County.

Q And what other courts are there in Cache [213] County where cases can be tried?

A Circuit court.

MR. SCHULTZ: Thank you.

THE COURT: Any redirect?

MR. HUMPHERYS: Yes, Your Honor.

REDIRECT EXAMINATION BY MR. HUMPHERYS:

Q Would all of the personal injury, wrongful death, that type of thing, be in the district court?

A Yes, sir.

Q And that would be these records, here.

A Yes, sir.

Q Circuit court is a court involving small amounts; is that --

A Of lesser jurisdiction.

Q Yes. All right. And how many hours did you spend working, going through all of these books to compile your list?

A I think it was approximately twenty, thirty-one hours.

Q Thirty-one hours?

A Uh-huh.

Q And were some of those hours done after your regular 8:00-to-5:00?

A Yes. I researched the records first myself, [214] which took me approximately nine, I think nine or ten hours, and to make sure, because I was concerned that I might have missed some cases, I asked for volunteers in my office, staff, and two of my clerks stayed back and spent an evening, we went through them the second time, just to verify and make sure.

Q So you've gone through them twice to verify your figures?

A Yes, sir.

Q Are these records available to Mr. Bennett if he would choose to come and look at them?

A Yes, sir.

MR. HUMPHERYS: We have nothing further.

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